

# Texas Historical Statutes Project

WEST'S TEXAS STATUTES 1974  
VOLUME 2

Corporations

Election Code  
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# West's Texas Statutes and Codes

Volume 2

**SUPERSEDED**

CORPORATIONS

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ELECTION CODE

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INSURANCE

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PROBATE CODE

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TAXATION

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2 West's Tex.Stats. & Codes  
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## PREFACE

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

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

### Scope of Volumes

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

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

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

### Tables

Disposition Tables are provided following each Code and throughout the Civil Statutes, providing a means of tracing repealed subject matter to parallel provisions.

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

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

## **PREFACE**

### **Indexes**

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

**THE PUBLISHER**

November, 1974

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# TEXAS BUSINESS CORPORATION ACT

Acts 1955, 54th Leg., Ch. 64

Approved April 15, 1955

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## PART ONE

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

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

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

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

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

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

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

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 1.02. Definitions**

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

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this State.

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

(4) "Shares" means the units into which the proprietary interests in a corporation are divided.

(5) "Subscription" means a memorandum in writing, executed before or after incorporation, wherein an offer is made to purchase and pay for a specified number of theretofore unissued shares of a corporation.

(6) "Subscriber" means the offeror in a subscription.

(7) "Cancel" means to restore issued shares to the status of authorized but unissued shares.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.

(10) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(11) "Stated capital" means, at any particular time, the sum of:

(a) the par value of all shares of the corporation having a par value that have been issued,

(b) the consideration fixed by the corporation in the manner provided by law for all shares of the corporation without par value that have been issued, except such part of the consideration actually received therefor as may have been allocated to capital surplus in a manner permitted by law, and

(c) such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(14) "Reduction surplus" means the surplus, if any, created by or arising out of a reduction of stated capital by any of the methods authorized by this Act.

(15) "Capital surplus" means the entire surplus of a corporation other than its earned surplus and its reduction surplus.

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

(17) "Consuming assets corporation" means a corporation which is engaged in the business of exploiting assets subject to depletion or amorti-

zation and which elects to state in its Articles of incorporation that it is a consuming assets corporation and includes as a part of its official corporate name the phrase "a consuming assets corporation," giving such phrase equal prominence with the rest of the corporate name on its financial statements and certificates representing shares. All its certificates representing shares shall also contain a further sentence: "This corporation is permitted by law to pay dividends out of reserves which may impair its stated capital."

(18) "Verified" means subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1718, ch. 657, § 1, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1086, ch. 545, § 1, eff. Aug. 27, 1973.]

## PART TWO

### Art. 2.01. Purposes

A. Except as hereinafter in this Article excluded herefrom, corporations for profit may be organized under this Act for any lawful purpose or purposes. Corporations for the purpose of operating non-profit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes, may not adopt or be organized under this Act.

B. No corporation may adopt this Act or be organized under this Act or obtain authority to transact business in this State under this Act:

(1) If any one or more of its purposes for the transaction of business in this State is expressly prohibited by any law of this State.

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

(3) If among its purposes for the transaction of business in this State, there is included, however worded, a combination of the two businesses listed in either of the following:

(a) The business of raising cattle and owning land therefor, and the business of operating stockyards and of slaughtering, refrigerating, canning, curing or packing meat. Owning and operating feed lots and feeding cattle shall not be considered as engaging in "the business of raising cattle and owning land therefor" within the purview of this paragraph of this subsection.

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the

oil pipe line business in this State: provided, however, that a corporation engaged in the oil producing business in this State which owns or operates private pipe lines in and about its refineries, fields or stations or which owns stock of corporations engaged in the oil pipe line business shall not be deemed to be engaging directly in the oil pipe line business in this State; and provided that any corporation engaged as a common carrier in the pipe line business for transporting oil, oil products, gas, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions, shall have all of the rights and powers conferred by Articles 6020 and 6022, Revised Civil Statutes, 1925.<sup>1</sup>

(4) If any one or more of its purposes is to operate any of the following:

(a) Banks, (b) trust companies, (c) building and loan associations or companies, (d) insurance companies of every type and character that operate under the insurance laws of this State, and corporate attorneys in fact for reciprocal or inter-insurance exchanges, (e) railroad companies, (f) cemetery companies, (g) cooperatives or limited cooperative associations, (h) labor unions, (i) abstract and title insurance companies whose purposes are provided for and whose powers are prescribed by Chapter 9 of the Insurance Code of this State.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1486, ch. 545, § 2, eff. Aug. 27, 1973.]

<sup>1</sup> Civil Statutes, arts. 6020, 6022.

## Art. 2.02. General Powers

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

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

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

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

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

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

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

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ,

mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) When permitted by the other provisions of this Act, to purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations, and, to purchase or otherwise acquire its own shares, and to redeem or purchase shares made redeemable by the provisions of its articles of incorporation.

(9) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(10) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(11) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act, within or without this State.

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

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

(14) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

(16) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in performance of duty, but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled,

under any bylaw, agreement, vote of shareholders, or otherwise.

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article.

(17) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, and other incentive plans for all of, or class, or classes of its officers and employees, or its officers or its employees.

(18) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted in any other jurisdiction to be an incorporator of any other corporation of any type or kind.

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

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

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provision of this Article.

C. Nothing contained in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Part Four of the Texas Miscellaneous Corporation Laws Act, as now existing or hereafter amended.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1718, ch. 657, § 2, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1486, ch. 545, § 3, eff. Aug. 27, 1973.]

#### Art. 2.03. Right of Corporation to Acquire and Dispose of Its Own Shares

A. A corporation shall not purchase directly or indirectly any of its own shares unless such purchase is authorized by this Article and not prohibited by its articles of incorporation.

B. A corporation may purchase its own shares to the extent of the aggregate of any unrestricted surplus available therefor and its stated capital when the purchase is authorized by the directors,

acting in good faith to accomplish any of the following purposes:

(1) To eliminate fractional shares.

(2) To collect or compromise indebtedness owed by or to the corporation.

(3) To pay dissenting shareholders entitled to payment for their shares under the provisions of this Act.

(4) To effect the purchase or redemption of its redeemable shares in accordance with the provisions of this Act.

C. Upon resolution of its board of directors authorizing the purchase and upon compliance with any other requirements of its articles of incorporation, a corporation may purchase its own shares to the extent of unrestricted earned surplus available therefor if accrued cumulative preferential dividends and other current preferential dividends have been fully paid at the time of purchase.

D. If the articles of incorporation so permit, or upon resolution of its board of directors and vote of the holders of at least two-thirds of all shares, entitled to vote thereon, a corporation may purchase, directly or indirectly, its own shares to the extent of the aggregate of unrestricted capital surplus available therefor and unrestricted reduction surplus available therefor.

E. To the extent that earned surplus, capital surplus or reduction surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto as to all of such restricted surplus not eliminated thereby.

F. In no case shall a corporation purchase or make payment, directly or indirectly, for its own shares when there is reasonable ground for believing that the corporation is insolvent, or will be rendered insolvent by such purchase or payment, or when, after such purchase, or payment, the fair value of its total assets will be less than the total amount of its debts.

G. An open-end investment company, registered as such under the Federal Investment Company Act of 1940, as heretofore or hereafter amended, if its articles of incorporation shall so provide, may purchase, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares, out of stated capital or any unrestricted surplus.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1488, ch. 545, §§ 4, 5, eff. Aug. 27, 1973.]

#### Art. 2.04. Defense of Ultra Vires

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

B. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact

that such act, conveyance or transfer was beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or by reason of limitations on authority of its officers and directors to exercise any statutory power of the corporation, as such limitations are expressed in the articles of incorporation, but that such act, conveyance or transfer was, or is, beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or inconsistent with any such expressed limitations of authority, may be asserted:

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

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority.

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.05. Corporate Name; Use of Assumed Names

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

(1) It shall contain the word "corporation," "company," or "incorporated," or shall contain an abbreviation of one of such words, and shall contain such additional words as may be required by law.

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

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

B. Any domestic or foreign corporation having authority to transact business in this State, may do so under an assumed name, by filing an assumed name certificate in the manner prescribed by law. [Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.06. Reserved Name

A. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this Act.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this State.

(4) Any foreign corporation authorized to transact business in this State and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this State.

B. The reservation shall be made by filing with the Secretary of State an application to reserve a specified corporate name, executed by the applicant or the attorney or agent thereof. If the Secretary of State finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred and twenty (120) days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.07. Registered Name

A. Any foreign corporation not authorized to transact business in this State may register its corporate name under this Act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under

the laws of this State or the name of any foreign corporation authorized to transact business in this State or any corporate name reserved or registered under this Act.

B. Such registration shall be made by:

(1) Filing with the Secretary of State:

(a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and

(b) A certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the Secretary of State of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the Secretary of State the required registration fee.

C. Such registration shall be effective for a period of one year from the date on which the application for registration is filed, unless voluntarily withdrawn by the filing of a written notice thereof with the Secretary of State.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1718, ch. 657, § 3, eff. June 17, 1967.]

#### Art. 2.08. Renewal of Registered Name

A. A corporation which has in effect a registration of its corporate name may renew such registration from year to year by filing annually an application for renewal in the manner prescribed for the filing of an original application. Such renewal application shall be filed during the ninety (90) days preceding the expiration date of the then current registration.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.09. Registered Office and Registered Agent

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

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

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State which has a business office identical with such registered office.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.10. Change of Registered Office or Registered Agent

A. A corporation may change its registered office or change its registered agent, or both, upon

filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

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

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

(4) The name of its then registered agent.

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

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

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors.

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

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

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

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

D. Any registered agent of a corporation may resign

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

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

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

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

(2) File one of such originals in his office.

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1969, 61st Leg., p. 2483, ch. 835, §§ 1, 2, eff. June 18, 1969.]

#### Art. 2.10-1. Change of Address of Registered Agent

A. The location of the business office of any registered office in Texas for a corporation, domestic or foreign, may be changed from one address to another within the same County upon filing in the office of the Secretary of State a statement setting forth:

(1) The name and last known address of the principal place of business of the corporation represented by such registered agent.

(2) The post office address at which such registered agent has maintained the registered office for said corporation.

(3) The new post office address at which such registered agent will thereafter maintain the registered office for said corporation, which shall be identical with the location of the business office of such registered agent.

(4) A statement that notice of the change has been given to said corporation in writing at least ten (10) days prior to such filing.

B. Triplicate originals of such statement shall be signed and verified by the registered agent, or, if said agent is a corporation, by the president or vice-president of such corporate agent, and delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall:

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

(2) File one of such originals in his office.

(3) Return one original to such registered agent.

(4) Return one original to the corporation at the last known address of the principal place of business of the corporation as shown in such statement.

C. The registered office of the corporation named in such statement shall be changed to the new address of the registered agent upon the filing of such statement by the Secretary of State.

[Acts 1967, 60th Leg., p. 1718, ch. 657, § 4, eff. June 17, 1967.]

#### Art. 2.11. Service of Process on Corporation

A. The president and all vice presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

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

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto. [Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.12. Authorized Shares

A. Each corporation may issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of the shares of any class to the extent that such limitation or denial is not inconsistent with the provisions of this Act.

B. Without being limited to the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any shares having a liquidation preference at the price fixed by the articles of incorporation for the redemption thereof.

(2) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of

the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1488, ch. 545, § 6, eff. Aug. 27, 1973.]

#### Art. 2.13. Issuance of Shares of Preferred or Special Classes in Series

A. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

- (1) The rate of dividend.
- (2) The price at and the terms and conditions on which shares may be redeemed.
- (3) The amount payable upon shares in event of involuntary liquidation.
- (4) The amount payable upon shares in event of voluntary liquidation.
- (5) Sinking fund provisions for the redemption or purchase of shares.
- (6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.
- (7) Voting rights.

B. If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this Article and in the articles of incorporation, to fix and determine the relative rights and preferences of the shares of any series so established.

C. In order to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

D. Prior to the issuance of any shares of a series established by resolution adopted by the board of

directors, the corporation shall file in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation.
- (2) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.
- (3) The date of adoption of such resolution.
- (4) That such resolution was duly adopted by the board of directors.

E. Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

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

F. Upon the filing of such statement by the Secretary of State, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become an amendment of the articles of incorporation.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1489, ch. 545, § 7, eff. Aug. 27, 1973.]

#### Art. 2.14. Subscription for Shares

A. Unless otherwise provided therein, a subscription for shares of a corporation to be organized may not be revoked within six (6) months, except with the consent of all other subscribers.

B. In the case of a corporation to be organized, the filing of the articles of incorporation by the Secretary of State shall constitute acceptance by the corporation of all subscriptions which are contained in a list of subscriptions filed with the articles of incorporation. Such list of subscriptions shall contain the name, post office address, number of shares, and amount paid by each subscriber. Failure to include a subscription in the list of subscriptions shall constitute a rejection of the offer.

C. In the case of an existing corporation, acceptance shall be effected by a resolution of acceptance by the board of directors or by a written memorandum of acceptance executed by one authorized by the board of directors and delivered to the subscriber or his assignee.

D. Subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of

directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty (20) days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. If the demand remains unsatisfied for a period of twenty (20) days, and if the corporation is solvent, the corporation may declare the subscription to be forfeited. The effect of such declaration of forfeiture shall be to terminate all the rights and obligations of the subscriber as such. [Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.14-1. Stock Rights, Options, and Convertible Indebtedness

A. Subject to any limitations in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, (1) rights or options entitling the holders thereof to purchase from the corporation any of its shares of any class or classes or other securities and (2) indebtedness convertible into any of its shares of any class or classes or other securities. Such rights, options or indebtedness shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth (a) in the case of rights or options, the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option, or (b) in the case of convertible indebtedness, the terms and conditions upon which, the time or times within which, and the conversion ratio or ratios at which such indebtedness may be converted into such shares. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights, options, or indebtedness shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares, to be issued upon the exercise of such rights or options shall not be less than the par value thereof. No privilege of conversion shall be conferred upon, or altered in respect to, any indebtedness that would result in receipt by the corporation of less than the minimum consideration required to be received upon issuance of the shares. The consideration for shares issued upon the exercise of

convertible indebtedness shall be that provided in Article 2.15 of this Act.

[Acts 1973, 63rd Leg., p. 1489, ch. 545, § 8, eff. Aug. 27, 1973.]

#### Art. 2.15. Consideration for Shares

A. Shares having a par value may be issued for such consideration, expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

B. Shares without par value may be issued for such consideration, expressed in dollars, as may be fixed from time to time by the board of directors, unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

C. Treasury shares may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

D. That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

E. In the event of the issuance of shares by a corporation upon the conversion or exchange of its indebtedness or shares, the consideration for the shares so issued shall be:

(1) The principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted, and

(2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and

(3) Any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1490, ch. 545, § 9, eff. Aug. 27, 1973.]

#### Art. 2.16. Payment for Shares

A. The consideration paid for the issuance of shares shall consist of money paid, labor done, or property actually received. Shares may not be issued until the full amount of the consideration, fixed as provided by law, has been paid. When such consideration shall have been paid to the corporation or to a corporation of which all of the outstanding shares of each class are owned by the corporation, the shares shall be deemed to have been issued and the subscriber or shareholder entitled to receive such issue shall be a shareholder with respect to such shares, and the shares shall be considered fully paid and non-assessable.

B. Neither promissory notes nor the promise of future services shall constitute payment or part payment for shares of a corporation.

C. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. [Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1971, 62nd Leg., p. 1173, ch. 276, § 1, eff. May 19, 1971.]

#### Art. 2.17. Determination of Amount of Stated Capital

A. In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

B. In case of the issuance by a corporation of shares without par value, the consideration fixed by the corporation in the manner provided by law shall constitute stated capital, unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty (60) days after the issuance of any shares without par value, the board of directors may allocate to capital surplus not more than twenty-five per cent (25%) of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of voluntary liquidation except the amount, if any, of such consideration in excess of such preference.

C. The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital.

D. If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this Article may instead be allocated to earned surplus by the Board of Directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this Act of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1719, ch. 657, § 4A, eff. June 17, 1967.]

#### Art. 2.18. Expenses of Organization, Reorganization, and Financing

A. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or

allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and nonassessable.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 1.]

#### Art. 2.19. Certificates Representing Shares

A. A corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president and either the secretary or assistant secretary or such officer or officers as the by-laws of the corporation shall prescribe, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president, secretary or assistant secretary or such officer or officers as the by-laws of the corporation shall prescribe upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent or registered by a registrar, either of which is other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance.

B. Every certificate representing shares (1) issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state on the face or back of the certificate (a) that the corporation will furnish to any shareholder without charge upon written request to the corporation at its principal place of business or registered office and (b) that there is on file in the office of the Secretary of State, (i) a full statement of all of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, (ii) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences of the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series; or (2) issued by a corporation which has by its articles of incorporation limited or denied the preemptive right of shareholders to acquire unissued or treasury shares of the corporation shall set forth upon the face or back of the certificate, or shall state (a) that the corporation will furnish to any shareholder without charge upon written request to the corporation at its principal place of business or registered office and (b) that there is on file in the office of the Secretary of State a full statement of the limitation or denial of preemptive rights contained in the articles of incorporation.

C. Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this State.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

D. No certificate shall be issued for any share until the consideration therefor, fixed as provided by law, has been fully paid.

E. No requirement of this Act with respect to matters to be set forth on certificates representing shares of a corporation shall apply to or affect certificates outstanding, when such requirement first becomes applicable to such certificates; but such requirements shall apply to all certificates thereafter issued whether in connection with an original issue of shares, a transfer of shares or otherwise. No certificate representing shares in which any provision of the articles of incorporation, or by-laws, or resolution, or agreement restricting the transfer of shares, shall have been incorporated by reference pursuant to the provisions of Section F of this Article prior to its amendment shall be invalidated or affected by such amendment; but such incorporation by reference shall not be used on certificates hereafter issued whether in connection with an original issue of shares, a transfer of shares, or otherwise.

F. A corporation which has adopted a by-law or is a party to an agreement restricting the transfer of its shares may incorporate such by-law or agreement by reference into its articles of incorporation or incorporate such agreement by reference into its by-laws, provided that the provisions of this Act for amendment of the articles of incorporation or by-laws have been complied with and that such by-law or agreement shall have theretofore been filed as follows:

(1) The corporation shall file a copy of the by-law or agreement in the office of the Secretary of State together with an attached statement setting forth:

(a) The name of the corporation;

(b) That the copy of the by-law or agreement restricting the transfer of shares is a true and correct copy of the same;

(c) That incorporation by reference of such by-law or agreement restricting the transfer of shares has been duly authorized by the board of directors of the corporation and that the provisions of this Act for amendment of the articles of incorporation or by-laws have been complied with.

(2) Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall be delivered to the Secretary of State with the copies of such by-law or agreement restricting the transfer of

shares attached thereto. If the Secretary of State finds that such statement conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office;

(c) Return the other duplicate original to the corporation or its representative.

(3) After the filing of such statement by the Secretary of State, any by-law or agreement restricting the transfer of shares, a copy of which is attached to such statement, referred to in another document as hereinabove provided shall be deemed to be incorporated in such other document by such reference to the same effect as if set forth at length in such document, whether the document containing such reference was issued or otherwise became effective before or after the filing of such statement, and whether or not such reference is accompanied by language purporting to set forth at length or to summarize the terms and provisions or some of the terms and provisions of such by-law or agreement restricting the transfer of shares.

(4) The provisions of this Section F of this Article shall not be construed to require that any such by-law or agreement be set forth in or incorporated by reference into the articles of incorporation of the corporation, or that any such agreement be set forth in or incorporated by reference into the by-laws of the corporation.

G. In the event any restriction on the transfer, or registration of the transfer of shares, shall be imposed or agreed to, by the corporation, as permitted by this Act, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate, or (3) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and that the corporation will furnish to the holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of the specified document. A corporation which fails within a reasonable time to furnish the holder of a certificate upon such request and without charge a copy of the specified document shall not be permitted thereafter to enforce its rights under the restriction imposed on the shares represented by such certificate.

H. As used in this Article and Article 2.22 of this Act, the term "conspicuous" or "conspicuously" when prescribed for information appearing on a certificate for shares or other securities means the use of type of sufficient size, color, or character that

a reasonable person against whom such information may operate should notice it. For example, a printed or typed statement in capitals, or bold-face or underlined type, or in type that is larger than or that contrasts in color with that used for other statements on the same certificate is "conspicuous." [Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 2; Acts 1973, 63rd Leg., p. 1490, ch. 545, § 10, eff. Aug. 27, 1973.]

#### Art. 2.20. Issuance of Fractional Shares or Scrip

A. A corporation may (1) issue fractions of a share, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may determine advisable.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1492, ch. 545, § 11, eff. Aug. 27, 1973.]

#### Art. 2.21. Liability of Subscribers and Shareholders

A. A holder of a certificate of shares or a subscriber whose subscription has been accepted shall be under no obligation to the corporation or to its creditors with respect to such shares other than the obligation to pay to the corporation the full amount of the consideration, fixed as provided by law, for which such shares were issued or to be issued.

B. Any person becoming an assignee or transferee of a certificate of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

C. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable as a holder of or subscriber to shares of a corporation, but the estate and funds in his hands shall be so liable.

D. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.22. Transfer of Shares and Other Securities and Restrictions on Transfer

A. The shares and other securities of a corporation shall be personal property for all purposes and shall be transferable in accordance with the provisions of Chapter 8—Investment Securities—of the Business & Commerce Code, as amended,<sup>1</sup> except as otherwise provided in this Act.

B. A restriction on the transfer or registration of transfer of a security may be imposed by the articles of incorporation, or by-laws, or a written agreement among any number of the holders of such securities, or a written agreement among any number of the holders and the corporation provided a counterpart of such agreement shall be placed on file by the corporation at its principal place of business and its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent, attorney or accountant, as are the books and records of the corporation. No restriction so imposed shall be valid with respect to any security issued prior to the adoption of the restriction unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing it.

C. Any restriction on the transfer or registration of transfer of a security of a corporation, if reasonable and noted conspicuously (as such term is defined in Article 2.19) on the security may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security, a restriction, even though otherwise enforceable, is ineffective except against a person with actual knowledge of the restriction.

D. In particular and without limiting the general power granted in Sections B and C of this Article to impose reasonable restrictions, a restriction on the transfer or registration of transfer of securities of a corporation shall be valid if it reasonably:

(1) Obligates the holders of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(2) Obligates the corporation to the extent permitted by this Act or any holder of securities of the corporation or any other person, or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(3) Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities for the purpose

of preventing violations of federal or state laws; or

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

(5) Maintains the status of the corporation as an electing small business corporation under Subchapter S of the United States Internal Revenue Code<sup>2</sup> or as a close corporation under this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, §§ 3, 4; Acts 1967, 60th Leg., p. 1719, ch. 657, § 5, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1493, ch. 545, § 12, eff. Aug. 27, 1973.]

<sup>1</sup> Bus. & C. § 8.101 et seq.  
<sup>2</sup> 26 U.S.C.A. § 1371 et seq.

#### Art. 2.22-1. Shareholders' Preemptive Rights

A. The shareholders of a corporation shall have a preemptive right to acquire additional, unissued, or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the extent limited or denied by this Article or by the articles of incorporation.

B. Unless otherwise provided in the articles of incorporation,

(1) No preemptive right shall exist:

(a) to acquire any shares issued to employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders; or

(b) to acquire any shares sold otherwise than for cash.

(2) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right.

(3) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

(4) Holders of common stock without voting power shall have no preemptive right to shares of common stock with voting power.

(5) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

[Acts 1973, 63rd Leg., p. 1494, ch. 545, § 13, eff. Aug. 27, 1973.]

#### Art. 2.23. Bylaws

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1494, ch. 545, § 14, eff. Aug. 27, 1973.]

#### Art. 2.24. Meetings of Shareholders

A. Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings shall be held at the registered office of the corporation.

B. An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13-month period, any court of competent jurisdiction in the county in which the principal office of the corporation is located may, on the application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a dissolution of the corporation.

C. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meetings, or such other persons as may be authorized in the articles of incorporation or the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1494, ch. 545, § 15, eff. Aug. 27, 1973.]

#### Art. 2.25. Notice of Shareholders' Meetings

A. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.26. Closing of Transfer Books and Fixing Record Date

A. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to

make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty (50) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of stock transfer books and the stated period of closing has expired. [Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.27. Voting List

A. The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima-facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

B. Failure to comply with the requirements of this Article shall not affect the validity of any action taken at such meeting.

C. An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or keep the same on file for a period of ten (10) days, or produce and keep it open for

inspection at the meeting, as provided in this Article, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. In the event that such officer or agent does not receive notice of a meeting of shareholders sufficiently in advance of the date of such meeting reasonably to enable him to comply with the duties prescribed by this Article, the corporation, but not such officer or agent, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.28. Quorum of Shareholders

A. Unless otherwise provided in the articles of incorporation, the holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of the holders of less than one-third ( $\frac{1}{3}$ ) of the shares entitled to vote and thus represented at such meeting. The vote of the holders of a majority of the shares entitled to vote and thus represented at a meeting at which a quorum is present shall be the act of the shareholders' meeting, unless the vote of a greater number is required by law, the articles of incorporation or bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.29. Voting of Shares

A. (1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except:

(a) To the extent that the articles of incorporation provide for more or less than one vote per share or (if and to the extent permitted by this Act) limit or deny voting rights to the holders of the shares of any class or series, or

(b) As otherwise provided by this Act.

(2) If the articles of incorporation provide for more or less than one vote per share for all the outstanding shares or for the shares of any class or any series on any matter, every reference in this Act (or in the articles of incorporation or bylaws, unless expressly stated otherwise therein), in connection with such matter, to a specified portion of such shares shall mean such portion of the votes entitled to be cast in respect of such shares by virtue of the provisions of such articles of incorporation.

B. Treasury shares, shares of its own stock owned by another corporation the majority of the voting stock of which is owned or controlled by it, and shares of its own stock held by a corporation in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time.

C. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall

be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law.

D. (1) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or unless expressly prohibited by the articles of incorporation to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

(2) Any shareholder who intends to cumulate his votes as herein authorized shall give written notice of such intention to the secretary of the corporation on or before the day preceding the election at which such shareholder intends to cumulate his votes. All shareholders may cumulate their votes if any shareholder gives the written notice provided for herein.

E. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine; provided, however, that when any foreign corporation without a permit to do business in this State lawfully owns or may lawfully own or acquire stock in Texas corporation, it shall not be unlawful for such foreign corporation to vote said stock and participate in the management and control of the business and affairs of such Texas corporation, as other stockholders, subject to all laws, rules and regulations governing Texas corporations and especially subject to the provisions of the Anti-Trust laws of the State of Texas.

F. Shares held by an administrator, executor, guardian, or conservator may be voted by him so long as such shares forming a part of an estate are in the possession and forming a part of the estate being served by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name as trustee.

G. Shares standing in the name of a receiver may be voted by such a receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

H. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 4A; Acts 1961, 57th Leg., p. 893, ch. 393, § 1, eff. June 1, 1964; Acts 1961, 57th Leg., p. 423, ch. 206, § 1; Acts 1967, 60th Leg., p. 1719, ch. 657, § 6, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1495, ch. 545, §§ 16, 17, eff. Aug. 27, 1973.]

#### Art. 2.30. Voting Trusts and Voting Agreements

A. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten (10) years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

B. Any number of shareholders may enter into a voting agreement in writing for the purpose of voting their shares as a unit, in the manner prescribed in the agreement, on any matter submitted to a vote at a meeting of the shareholders for a period not exceeding ten (10) years from the date of the execution of the agreement. A counterpart of the agreement shall be deposited with the corporation at its principal office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation. Each certificate representing shares held by the parties to the agreement shall contain a statement that the shares represented by the certificate are subject to the provisions of a voting agreement, a counterpart of which has been deposited with the corporation at its principal office. Upon such deposit of the counterpart of the agreement and endorsement of the prescribed statement upon the certificates representing shares, the agreement shall be specifically enforceable in accordance with the principles of equity. [Acts 1961, 57th Leg., p. 423, ch. 206, § 2.]

#### Art. 2.30-1. Management of Close Corporation

A. A "close corporation" as used in this Article and in Articles 2.30-2 through 2.30-5 means a domestic corporation (1) which, at any given time, has no more than 15 shareholders of record of all classes of shares, whether or not entitled to vote; (2) whose issued shares of all classes shall be subject to one or more of the restrictions on transfer permitted by Article 2.22 of this Act; and (3) whose shares shall have been issued to its shareholders without any public offering, solicitation, or advertisement. For purposes of determining the number of holders of

record of shares of stock in a close corporation as defined in this Article, shares which are held (1) by husband and wife as (a) community property, (b) joint tenants (with or without right of survivorship), or (c) tenants by the entirety, (2) by an estate of a decedent or an incompetent, or (3) by a trust, partnership, or corporation created or organized and existing other than for the primary purpose of holding shares in a close corporation, shall be treated as held by one person. Nothing in this definition shall be deemed to affect the right of any corporation which is not a close corporation as defined herein or its shareholders or directors to provide for the management of its business and affairs by its shareholders, directors, or officers or to impose restrictions on the transfer of its shares or other securities or to seek any remedy, or to exercise any other power or right, granted or permitted by other provisions of this Act. To the extent not inconsistent with this Article and Articles 2.30-2 and 2.30-3 of this Act, all other provisions of this Act shall apply to a close corporation as defined herein.

B. If the articles of incorporation of a close corporation expressly so state and if each certificate representing its issued and outstanding shares so conspicuously (as defined in Article 2.19 of this Act) states, the business and affairs of such close corporation shall be managed by the shareholders of the close corporation rather than by a board of directors, and the following provisions shall apply:

(1) Whenever the context requires, the shareholders of such close corporation shall be deemed directors of such corporation for purposes of applying any of the provisions of this Act.

(2) The shareholders of such close corporation shall be subject to the liabilities imposed by this Act or by law for any action taken or neglected to be taken by directors of a corporation.

(3) Any action required or permitted by this Act to be taken by the board of directors of a corporation shall or may be taken by action of the shareholders of such close corporation at a meeting thereof or in the manner permitted by this Act without a meeting. In addition, in the event of any action taken by the shareholders, the consent of all the shareholders shall be binding upon the corporation. Such consent may be evidenced (i) by the full knowledge of such action by all the shareholders and their failure to object thereto in a timely manner or (ii) by a writing executed by or on behalf of all the shareholders or (iii) by any other means reasonably evidencing such consent.

C. If a close corporation ceases to meet the definition of a close corporation as set forth herein by reason of having more than fifteen (15) shareholders entitled to hold shares in the corporation in accordance with any restriction on the transfer of shares permitted by Article 2.22 of this Act or any provision of an agreement among shareholders of a close corporation permitted by Article 2.30-2 of this Act,

whether or not all such shareholders are entitled to vote, the president shall call a special meeting of the shareholders entitled to vote thereon to elect a board of directors; and if he fails to call such a special meeting within four (4) months from the date when the corporation ceases to qualify as a "close corporation," any shareholder, whether or not entitled to vote, may call such special meeting, with the same rights and powers as are provided in this Act for the call of a substitute annual meeting by a shareholder. At such special meeting, there shall be elected such number of directors as have been specified in the articles or the bylaws, if the articles or bylaws provided for the possibility of the corporation ceasing to qualify as a close corporation; and if no such number is specified, three (3) directors shall be elected.

[Acts 1973, 63rd Leg., p. 1495, ch. 545, § 18, eff. Aug. 27, 1973.]

#### Art. 2.30-2. Agreements Among Shareholders of a Close Corporation

A. The shareholders of a close corporation may, by an agreement to which all the shareholders of the corporation, whether or not entitled to vote, have actually assented, regulate any phase of the business and affairs of the corporation or the relations of the shareholders, including, but not limited to, the following:

(1) Management of the business and affairs of the corporation whether by the board of directors or one or more of the shareholders or one or more other parties to be selected by the shareholders;

(2) Restrictions on the transfer of shares or other securities;

(3) Exercise or division of voting requirements or power;

(4) Terms and conditions of employment of any shareholder, director, officer, or employee regardless of the length of time of such employment;

(5) Persons who shall be directors and officers of the corporation;

(6) Declaration and payment of dividends or division of profits;

(7) Arbitration of issues as to which the shareholders are deadlocked in voting power or as to which the directors or other parties managing the corporation are deadlocked in the event the shareholders are unable to break the deadlock; or

(8) Treatment of the business and affairs of the corporation as if it were a partnership or arrangement of the relations among the shareholders or between the shareholders and the corporation in a manner that would otherwise be appropriate only among partners.

B. To be valid, such shareholders' agreement either (1) shall be set forth in full in the articles of incorporation of the close corporation or incorporat-

ed by reference therein by following the procedure prescribed in Section F, Article 2.19, of this Act, for incorporation by reference of restrictions on the transferability of shares; or (2) shall be set forth in the bylaws of the corporation or incorporated by reference therein, provided such bylaws and a counterpart of the agreement be placed on file by the corporation at its principal place of business and its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person, or by agent, attorney, or accountant, as are the books and records of the corporation. If the agreement is set forth or referred to in the original articles of incorporation, all the parties to the agreement shall serve as incorporators of the close corporation. If set forth or referred to in an amendment to the articles of incorporation, such amendment shall have been adopted by a vote of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If set forth or referred to in the bylaws of the corporation either when originally adopted or later amended, such provision of the bylaws shall have been adopted, amended, or ratified by a unanimous vote of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation.

C. Each certificate representing shares of stock issued by a close corporation whose shareholders have entered into an agreement permitted by this Article shall (1) set forth conspicuously a full or summary statement of such agreement on the face of the certificate; or (2) set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (3) if the agreement has been set forth in full in the articles of incorporation or incorporated by reference therein, conspicuously state on the face or back of the stock certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of such agreement and that the provisions of such agreement are on file in the office of the Secretary of State; or (4) if the agreement has been set forth in full or incorporated by reference in the bylaws and a counterpart of the agreement placed on file by the corporation at its principal place of business and its registered office, conspicuously state on the face or back of the certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the holder of a certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of such bylaw or agreement. Unless noted conspicuously on the stock certificates in the manner prescribed above, such agreement even though otherwise enforceable among the parties thereto shall not be binding upon a transferee of such shares unless such transferee is a person with actual notice of the existence of the agreement, or such transferee ac-

quired his shares by gift or bequest from a person who was a party to such agreement in which case such transferee shall be deemed to have actual notice thereof.

D. To the extent that it contains any provisions which would not be valid but for Section A of this Article, an agreement authorized by this Article shall be valid only so long as (1) no shares of the corporation shall have been issued by the corporation through any public offering, solicitation, or advertisement; and (2) the corporation maintains its status as a close corporation as defined in Article 2.30-1 of this Act.

E. In the event a close corporation shall have a board of directors, the effect of an agreement authorized by this Article shall be to relieve the director or directors of, and to impose upon the shareholders who are parties to or are bound by the agreement and who voted for or assented to the transaction in question, the liabilities imposed by this Act or by law for action taken or neglected to be taken by directors to the extent that and so long as the discretion or powers of the directors in their management of corporate affairs is controlled by any such provision. [Acts 1973, 63rd Leg., p. 1497, ch. 545, § 19, eff. Aug. 27, 1973.]

**Art. 2.30-3. Proceedings to Prevent Loss of Close Corporation Status or to Enforce Agreements Among Shareholders of a Close Corporation**

A. Any close corporation as defined in this Act, a shareholder of such corporation, or a person who is party to or is bound by an agreement among shareholders of a close corporation, may file a petition in any court of competent jurisdiction in the county in which the close corporation has its principal place of business, to have the court, if it shall deem the same equitable, issue all orders necessary to prevent the corporation from losing its status as a close corporation; or to restore its status as a close corporation by enjoining or setting aside any act or threatened act on the part of the corporation or a shareholder or any other person which would be inconsistent with its status as a close corporation; or to enforce by injunction, specific performance, or such other relief as the court may determine to be fair and appropriate in such circumstances an agreement among shareholders of a close corporation permitted by Article 2.30-2 of this Act.

B. As an alternative to the granting of an injunction, specific performance or other equitable or legal relief in any proceeding brought under Section A, of this Article, the court may, upon the motion of a party to the proceeding, order the appointment of a receiver for specific assets of the close corporation or to rehabilitate the close corporation, or order the liquidation of the assets and business of the close corporation, and decree its involuntary dissolution, as permitted by this Act, but only if the court shall find that the grounds for such receivership or liquidation and involuntary dissolution provided for in this Act exist.

C. Any court of competent jurisdiction in which a proceeding provided for in Section A of this Article may be brought may enjoin or set aside any transfer or threatened transfer of shares of stock of a close corporation which will adversely affect its status as a close corporation, or which is contrary to restrictions on the transfer of shares of such stock permitted by Article 2.22 of this Act, and may enjoin any public offering, solicitation, or advertisement of shares of stock of the close corporation.

D. Nothing contained in this Article shall impair the power of any court of competent jurisdiction in any proceeding properly brought before it to enforce any restriction on the transfer of shares or other securities permitted by Article 2.22 of this Act or any agreement among any number of holders of the securities of a corporation or any number of the holders of such securities and the corporation not provided for in Article 2.30-2 of this Act and to grant whatever remedies may be properly available in such proceedings.

[Acts 1973, 63rd Leg., p. 1498, ch. 545, § 20, eff. Aug. 27, 1973.]

**Art. 2.30-4. Appointment of a Provisional Director for a Close Corporation in Certain Cases**

A. Notwithstanding any contrary provision in the articles of incorporation, or bylaws, or agreement among shareholders of a close corporation, any close corporation, a shareholder of such corporation, or a person who is party to or who is bound by an agreement among shareholders of a close corporation, may file a petition in any court of competent jurisdiction in the county in which the corporation has its principal place of business to have the court appoint a provisional director for the close corporation when it is established that the directors, or the shareholders if they have been empowered to manage the business and affairs of the close corporation as permitted by this Act, are so divided respecting the management of the corporation's business and affairs that the votes required for action by the board of directors or the shareholders, as the case may be, cannot be obtained with the consequence that the business and affairs of the close corporation can no longer be conducted to the advantage of the shareholders generally.

B. A provisional director shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the court. A provisional director is not a receiver of the close corporation and does not have the powers and duties of receivers appointed under Articles 7.04-7.07 of this Act. A provisional director shall have all the rights and powers of a duly elected director of the close corporation, or the rights and powers of vote of a shareholder if management of the business and affairs of the close corporation has been vested in its shareholders as permitted by this Act, including the right

to notice of and to vote at meetings of directors or shareholders, as the case may be. A provisional director shall serve until removed by order of the court or by a vote of a majority of the directors or the shareholders, as the case may be, or if the articles of incorporation require the concurrence of a greater majority for action by the directors or the shareholders, as the case may be, then by that majority. The compensation of a provisional director shall be determined by an agreement between him and the close corporation subject to the approval of the court, which may fix his compensation in the absence of an agreement or in the event of a disagreement between the provisional director and the close corporation.

[Acts 1973, 63rd Leg., p. 1499, ch. 545, § 21, eff. Aug. 27, 1973.]

**Art. 2.30-5. Shareholder's Option to Dissolve Close Corporation**

A. The articles of incorporation of a close corporation may include a provision granting to any shareholder, or to the holders of any specified number or percentage of shares of any class of stock, an option to have the close corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the shareholders exercising the option shall give written notice thereof to all other shareholders. After the expiration of thirty (30) days following the sending of such notice, the dissolution of the close corporation shall proceed as if all its shareholders had consented in writing to dissolution of the corporation as provided in Article 6.02 of this Act.

B. Each certificate of shares of a close corporation whose articles of incorporation authorizes dissolution as permitted by this article shall (1) set forth conspicuously a full or summary statement of such provision on the face of the certificate, or (2) set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate, or (3) shall conspicuously state on the face or back of the certificate that the corporation will furnish to any shareholder without charge upon written request to the close corporation at its principal place of business or registered office and that there is on file in the office of the Secretary of State a full statement of the provision giving shareholders the option to dissolve the close corporation.

[Acts 1973, 63rd Leg., p. 1500, ch. 545, § 22, eff. Aug. 27, 1973.]

**Art. 2.31. Board of Directors**

A. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 2.32. Number and Election of Directors**

A. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the initial board of directors shall be stated in the articles of incorporation. Unless removed in accordance with the provisions of the bylaws or the articles of incorporation, such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act. Unless removed in accordance with provisions of the bylaws or the articles of incorporation, each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified. The bylaws or the articles of incorporation may provide that at any meeting of shareholders called expressly for that purpose any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors, subject to any further restrictions on removal which may be contained in the bylaws. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or if there be classes of directors, at an election of the class of directors of which he is a part.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1500, ch. 545, § 23, eff. Aug. 27, 1973.]

**Art. 2.33. Classification of Directors**

A. When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such

classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 2.34. Vacancies**

A. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 2.35. Quorum of Directors**

A. A majority of the number of directors fixed by, or in the manner provided in, the articles of incorporation or the bylaws shall constitute a quorum for the transaction of business unless a greater number is required by law or the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by law or the articles of incorporation or the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1501, ch. 545, § 24, eff. Aug. 27, 1973.]

**Art. 2.36. Executive and Other Committees**

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, approving a plan of merger or consolidation, recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in or removing members of the board of directors or any such committee, fixing the compensation of any member of such committee, or altering or repealing

any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation, or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1501, ch. 545, § 25, eff. Aug. 27, 1973.]

#### Art. 2.37. Place and Notice of Directors' Meetings

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.38. Dividends

A. The board of directors of a corporation may, from time to time, declare, and the corporation may pay, dividends on its outstanding shares in cash, in property, or in its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this Act.

(2) Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation.

(3) Dividends may be declared and paid in its own authorized but unissued shares out of unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of

surplus equal to the aggregate par value of the shares to be issued as a dividend.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(4) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or unless such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

B. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this Article.

C. The board of directors must, when requested by the holders of at least one third of the outstanding shares of the corporation, present written reports of the situation and amount of business of the corporation and, subject to limitations on the authority of the board of directors by provisions of law, or the articles of incorporation or the bylaws, the board shall declare and provide for payment of such dividends of the profits from the business of the corporation as such board shall deem expedient.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.39. Dividends of Consuming Assets Corporation

A. In addition to dividends otherwise authorized by law, the board of directors of a consuming assets corporation may declare, and the corporation may pay, dividends on its outstanding shares in cash or in property in an amount not exceeding the total amount of the depletion and amortization reserves created by the corporation, subject to the following conditions and limitations:

(1) No dividend shall be declared or paid by authority of this Article if the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, or if the corporation is insolvent, or if such dividend would render the corporation insolvent, or if, after payment of the dividend and after such provision is made for depletion and amortization as would fairly reflect the decrease in value of the corporate assets, the assets of the corporation would not exceed its liabilities.

(2) No such dividend shall be paid to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(3) No such dividend shall be paid to the holders of any class of shares which would reduce the remaining net assets of the corporation, after such provision for depletion and amortization reserves is made as will fairly reflect the decrease in value of corporate assets, below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(4) When any dividend is paid in whole or in part by authority of this Article, all notices, reports, financial statements, and other official corporate references to such dividend shall clearly indicate what part of such dividend is so paid.

(5) Any such dividend shall be carried on the accounting records of the corporation in a separate account or accounts, which shall be appropriately entitled and shown on all corporate financial statements as a deduction from the respective reserve accounts on the basis of which the dividend was paid.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.40. Distributions in Partial Liquidation

A. The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of capital surplus or reduction surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:

(1) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent. No such distribution shall be made in an amount that would impair the ability of the corporation to carry on the business of the corporation to the extent contemplated by its board of directors if any subsequent operations by the corporation are so contemplated.

(2) No such distribution out of reduction surplus shall be made unless such distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(3) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation

below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(5) Each such distribution, when made, shall be identified as a distribution in partial liquidation, and the amount per share shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof, and if such distribution is made, wholly or in part, out of reduction surplus, the amount per share which is paid out of reduction surplus shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

B. The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, cash payments out of the unrestricted capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent, and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.41. Liability of Directors and Shareholders in Certain Cases

A. In addition to any other liabilities imposed by law upon directors of a corporation:

(1) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Act, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid, or the value of such assets which are distributed in excess of the amount of such dividends or distribution which could have been paid or distributed without violating the provisions of this Act or the restrictions in the articles of incorporation.

(2) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Act shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without violating the provisions of this Act.

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally

liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(5) If the corporation shall commence business before it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000), consisting of money, labor done, or property actually received, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of the required consideration as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received the required consideration for the issuance of shares.

(6) In the event of the insolvency of a corporation, directors who have voted for or assented to any payments out of the reduction surplus of the corporation, whether in the course of a distribution in partial liquidation or as the purchase price of shares issued by the corporation and later purchased by it, shall be liable to the corporation, or to its receiver or trustee in bankruptcy, to the extent of the amount of such payments made, for the purpose of discharging creditor claims against the corporation which existed at the time such payments were made or which were incurred within thirty (30) days after notice of the reduction of stated capital had been filed, but such liability shall be imposed only to the extent that such creditor claims have not been fully paid after such creditors have shared with other creditors in the assets of the corporation. Any director against whom a claim shall be asserted under this subsection, and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received such payments out of reduction surplus, to the extent of the amounts of such payments received by them, respectively.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

C. A director shall not be liable under subsections (1), (2) or (3) of Section A of this Article if, in the exercise of ordinary care, he relied and acted in good faith upon written financial statements of the corporation represented to him to be correct by the president or by the officer of such corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if, in the exercise of ordinary care and in good faith, in determining the amount available for any such dividend or distribution, he considered the assets to be of their book value.

D. A director shall not be liable for any claims or damages that may result from his acts in the discharge of any duty imposed or power conferred upon him by the corporation if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

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

F. A director against whom a claim shall be asserted under this Article shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.42. Officers

A. The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two (2) or more offices may be held by the same person, except that the president and secretary shall not be the same person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.43. Removal of Officers

A. Any officer or agent or member of the executive committee elected or appointed by the board of

directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 2.44. Books and Records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records, and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

B. Any person who shall have been a holder of record of shares for at least six (6) months immediately preceding his demand, or shall be the holder of record of at least five per cent (5%) of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent, accountant, or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes, and record of shareholders, and to make extracts therefrom.

C. Any corporation which shall refuse to allow any such shareholder or his agent, accountant or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder for all costs and expenses, including attorneys' fees, incurred in enforcing his rights under this Article in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two (2) years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

D. Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof of proper purpose by a beneficial or record holder of shares, irrespective of the period of time during which such holder shall have been a benefi-

cial or record holder and irrespective of the number of shares held by him, to compel the production for examination by such holder of the books and records of account, minutes, and record of shareholders of a corporation.

E. Upon the written request of any holder of record of shares of a corporation, the corporation shall mail to such holder its annual statements for its last fiscal year showing in reasonable detail its assets and liabilities and the results of its operations and the most recent interim statements, if any, which have been filed in a public record or otherwise published. The corporation shall be allowed a reasonable time to prepare such annual statements.

F. A holder of a beneficial interest in a voting trust complying with this Act shall be regarded as a holder of record of shares with respect to the shares represented by such beneficial interest for the purposes of this Article.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1502, ch. 545, § 26, eff. Aug. 27, 1973.]

### PART THREE

#### Art. 3.01. Incorporators

A. Three (3) or more natural persons, two (2) of whom must be citizens of the State of Texas, of the age of twenty-one (21) years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Secretary of State articles of incorporation for such corporation.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;
- (4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;
- (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;
- (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are

to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(7) A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received;

(8) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

(9) Any provision permitting a close corporation as defined and governed by this Act to have its business and affairs managed by its shareholders rather than by a board of directors, or granting to any shareholder or to the holders of any specified number or percentage of shares of any class of shares of a close corporation an option to have the close corporation dissolved as permitted by this Act;

(10) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;

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

(12) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(13) The name and address of each incorporator.

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 5; Acts 1973, 63rd Leg., p. 1503, ch. 545, § 27, eff. Aug. 27, 1973.]

#### Art. 3.03. Filing of Articles of Incorporation

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

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 3.04. Effect of Issuance of Certificate of Incorporation

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 3.05. Requirement Before Commencing Business

A. A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 6.]

#### Art. 3.06. Organization Meeting of Directors

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1504, ch. 545, § 28, eff. Aug. 27, 1973.]

### PART FOUR

#### Art. 4.01. Right to Amend Articles of Incorporation

A. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to

effect such change, exchange, reclassification, or cancellation.

B. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time so as:

- (1) To change its corporate name.
- (2) To change its period of duration.
- (3) To change, enlarge, or diminish its corporate purposes.
- (4) To increase or decrease the aggregate number of shares of any class which the corporation has authority to issue.
- (5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (6) To exchange, classify, or reclassify all or any part of its shares, whether issued or unissued or to cancel all or any part of its outstanding shares.
- (7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and relative rights in respect of all or any part of its shares, whether issued or unissued.
- (8) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.
- (9) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.
- (10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.
- (11) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.
- (12) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.
- (13) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.
- (14) To authorize the board of directors to fix and determine the relative rights and prefer-

ences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(15) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(16) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

(17) To become a consuming-assets corporation as defined and governed by this Act.

(18) To permit a close corporation as defined and governed by this Act to have its business and affairs managed by its shareholders rather than by a board of directors.

(19) To permit a close corporation as defined and governed by this Act whose business and affairs are managed by its shareholders as permitted by this Act to have its business and affairs managed by a board of directors.

(20) To adopt or remove a provision granting to any shareholder of a close corporation as defined and governed by this Act, or to the holders of any specified number or percentage of shares of any class of shares of such corporation, an option to have the close corporation dissolved as permitted by this Act.

C. The articles of incorporation shall not be amended so as to reduce the aggregate stated capital of the corporation to a sum less than One Thousand Dollars (\$1,000.00).

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1504, ch. 545, § 29, eff. Aug. 27, 1973.]

#### Art. 4.02. Procedure to Amend Articles of Incorporation

A. The articles of incorporation may be amended in the following manner:

- (1) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as heretofore amended, and that the

restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares within each class of outstanding shares entitled to vote thereon as a class and of at least two-thirds of the total outstanding shares entitled to vote thereon.

B. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

C. Repealed by Acts 1973, 63rd Leg., p. 1507, ch. 545, § 32.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1719, ch. 657, § 7, eff. June 17, 1967; Acts 1973, 63rd Leg., pp. 1505, 1507, ch. 545, §§ 30, 32, eff. Aug. 27, 1973.]

#### Art. 4.03. Class Voting on Amendments

A. The holders of the outstanding shares of any class entitled to vote upon a proposed amendment by the provisions of the articles of incorporation shall be entitled to vote as a class thereon if the amendment would change the shares of any class having a par value into the same or a different number of shares without par value, or would change the shares of any class without par value into the same or a different number of shares having a par value, or would change the shares of any class, whether with or without par value, into a different number of shares of the same class.

B. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

- (1) Increase or decrease the aggregate number of authorized shares of such class.
- (2) Increase or decrease the par value of the shares of such class.
- (3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(5) Change the designations, preferences, limitations, or relative rights of the shares of such class.

(6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(7) Create a new class of shares having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of such class in such a manner as to become equal, prior, or superior to the shares of such class.

(8) In case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

(9) Limit or deny the existing preemptive rights of the shares of such class.

(10) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(11) Permit a close corporation as defined and governed by this Act to have its business and affairs managed by its shareholders rather than by a board of directors.

(12) Permit a close corporation as defined and governed by this Act whose business and affairs are managed by its shareholders as permitted by this Act to have its business and affairs managed by a board of directors.

(13) To adopt or remove any provision granting to any shareholder of a close corporation as defined and governed by this Act, or to the holders of any specified number or percentage of shares of any class of shares of such corporation, an option to have the close corporation dissolved as permitted by this Act.

C. Repealed by Acts 1973, 63rd Leg., p. 1507, ch. 545, § 32.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1758, ch. 663, § 1, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1506, ch. 545, §§ 31, 32, eff. Aug. 27, 1973.]

#### Art. 4.04. Articles of Amendment

A. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant

secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

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

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.

(4) The number of shares outstanding, and the number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the amendment, respectively, or if no shares have been issued a statement to that effect.

(6) If the amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(7) If the amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the amendment.

B. Repealed by Acts 1973, 63rd Leg., p. 1507, ch. 545, § 34.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1719, ch. 657, § 8, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1507, ch. 545, §§ 33, 34, eff. Aug. 27, 1973.]

#### Art. 4.05. Filing of Articles of Amendment

A. Duplicate originals of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

B. The certificate of amendment, together with the duplicate original of the articles of amendment

affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative. [Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 4.06. Effect of Certificate of Amendment

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 4.07. Restated Articles of Incorporation

A. A corporation may, by following the procedure to amend the articles of incorporation provided by this Act (except that no shareholder approval shall be required where no amendment is made), authorize, execute, and file restated articles of incorporation which may restate either:

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

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

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

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

(1) Set forth, for any amendment made by such restated articles of incorporation, a statement that each such amendment has been ef-

fectured in conformity with the provisions of this Act, and shall further set forth the statements required by this Act to be contained in articles of amendment.

(2) Contains a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted.

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

D. Such restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. Duplicate originals of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

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

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 7; Acts 1973, 63rd Leg., p. 1507, ch. 545, § 35, eff. Aug. 27, 1973.]

#### Art. 4.08. Procedure for Redemption

A. A corporation may at any time, subject to the provisions of the articles of incorporation, proceed, by resolution of its board of directors, to redeem any or all outstanding shares subject to redemption. If less than all such shares are to be redeemed, the

shares to be redeemed shall be selected for redemption in accordance with the provisions in the articles of incorporation, or, in the absence of such provisions therein, may be selected ratably or by lot in such manner as may be prescribed by resolution of the board of directors. Such redemption shall be effected by call and written or printed notice in the following manner:

(1) The notice of redemption of such shares shall set forth:

(a) The class or series of shares or part of any class or series of shares to be redeemed.

(b) The date fixed for redemption.

(c) The redemptive price.

(d) The place at which the shareholders may obtain payment of the redemptive price upon surrender of their respective share certificates.

(2) The notice shall be given to each holder of redeemable shares being called, either personally or by mail, not less than twenty (20) nor more than fifty (50) days before the date fixed for redemption. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer book of the corporation, with postage thereon prepaid.

B. A corporation may, on or prior to the date fixed for redemption of redeemable shares, deposit with any bank or trust company in this State, or any bank or trust company in the United States duly appointed and acting as transfer agent for such corporation, as a trust fund, a sum sufficient to redeem shares called for redemption, with irrevocable instructions and authority to such bank or trust company to give or complete the notice of redemption thereof and to pay, on or after the date fixed for such redemption, to the respective holders of shares, as evidenced by a list of holders of such shares certified by the corporation by its president or a vice president and by its secretary or an assistant secretary, the redemptive price upon the surrender of their respective share certificates. Thereafter, from and after the date fixed for redemption, such shares shall be deemed to be redeemed and dividends thereon shall cease to accrue after such date fixed for redemption. Such deposit shall be deemed to constitute full payment of such shares to their holders. Thereafter, such shares shall no longer be deemed to be outstanding, and the holders thereof shall cease to be shareholders with respect to such shares, and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the redemptive price of such shares without interest, upon the surrender of their respective certificates therefor, and any right to convert such shares which may exist. In case the holders of such shares shall not, within six (6) years after such deposit, claim the amount deposited for redemption thereof, such bank or trust company

shall upon demand pay over to the corporation the balance of such amount so deposited to be held in trust and such bank or trust company shall thereupon be relieved of all responsibility to the holders thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 4.09. Restrictions on Redemption or Purchase of Redeemable Shares**

A. Irrespective of any provisions in the articles of incorporation of a corporation respecting the purchase or redemption of redeemable shares, shares shall be redeemable only if they have a liquidation preference, and no redemption or purchase of redeemable shares shall be made by a corporation:

(1) At a price exceeding the redemptive price thereof.

(2) When there is a reasonable ground for believing that such redemption or purchase will render the corporation unable to satisfy its debts and liabilities when they fall due.

(3) Which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon voluntary dissolution.

(4) Which would involve paying any shareholder more than the stated capital represented by the shares redeemed, unless the excess shall be paid out of a surplus of the corporation.

(5) Which would reduce the aggregate stated capital to a sum less than One Thousand Dollars (\$1,000).

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 4.10. Reduction of Stated Capital by Redemption or Purchase of Redeemable Shares**

A. When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this Article. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall operate as an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled. If the shares so redeemed and purchased constitute all the outstanding shares of any particular class of shares and if the articles of incorporation provide that the shares of such class when redeemed and repurchased shall not be reissued, the filing of the statement of cancellation shall operate as an amendment to the articles of incorporation by eliminating therefrom all reference to such class of shares and shall reduce the classes of shares which the corporation is authorized to issue accordingly.

B. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) The number of redeemable shares cancelled through the redemption or purchase, itemized by classes and series.

(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(5) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

C. Duplicate originals of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

D. The filing of the statement of cancellation shall effect a reduction of the stated capital of the corporation by an amount equal to that part of the stated capital which was, at the time of the cancellation, represented by the shares so cancelled.

E. Nothing contained in this Article shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 4.11. Cancellation of Treasury Shares**

A. A corporation may, at any time, by resolution of its board of directors, cancel all or any part of its treasury shares, and in such event a statement of cancellation shall be filed as provided in this Article.

B. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, shall be verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) A statement that a resolution has been duly adopted by the board of directors authorizing the cancellation, the date of adoption of such resolution, and a summary of its contents,

including a statement of the number of treasury shares to be cancelled, itemized by classes and series, and the amount of stated capital represented by the shares to be cancelled.

(3) The aggregate number of shares, itemized by classes and series and par value, if any, which are to retain the status of issued shares after the cancellation becomes effective.

(4) The amount, expressed in dollars, which is to constitute the stated capital of the corporation after the cancellation becomes effective.

C. Duplicate originals of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

D. Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

E. Nothing contained in this Article shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 4.12. Reduction of Stated Capital without Amendment of Articles and without Cancellation of Shares

A. If all or part of the stated capital of a corporation is represented by shares without par value, the stated capital of the corporation may be reduced in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders.

(3) At the meeting for which such notice has been given, the affirmative vote of the holders of at least a majority of the shares entitled to vote on the question shall be required for approval of the resolution proposing the reduction of stated capital.

B. When a reduction of the stated capital of a corporation has been approved as provided in this Article, a statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

(3) The number of shares outstanding, and the number of shares entitled to vote on the resolution.

(4) The number of shares voted for and against such reduction, respectively.

(5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

C. Duplicate originals of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the Corporation or its representative.

D. Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

E. No reduction of stated capital shall be made under the provisions of this Article which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of voluntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of voluntary liquidation. In no event shall the aggregate stated capital of the corporation be reduced to a sum less than One Thousand Dollars (\$1,000.00). [Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 4.13. Special Provisions Relating to Surplus and Reserves

A. The surplus created by any reduction of the stated capital of a corporation, such reduction being

accomplished by any of the methods permitted by this Act, shall be deemed to be reduction surplus.

B. A corporation may, by resolution of the board of directors, apply any part or all of its capital surplus or reduction surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus or reduction surplus shall, to the extent thereof, effect a reduction of such surplus.

C. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 4.14. Amendment of Articles of Incorporation in Reorganization Proceedings**

A. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this Article, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

B. In particular, and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- (1) Change the corporate name, period of duration, or corporate purposes of the corporation.
- (2) Repeal, alter, or amend the bylaws of the corporation.
- (3) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (4) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
- (5) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for

shares of any class, and fix the terms and conditions thereof.

(6) Constitute or reconstitute and classify or reclassify the board of directors and officers in place of or in addition to all or any of the directors or officers then in office.

C. Amendments to the articles of incorporation pursuant to this Article shall be made in the following manner:

(1) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(2) Duplicate originals of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of amendment to which he shall affix the other duplicate original.

(3) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Secretary of State, shall be returned to the corporation or its representative.

D. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

[Acts 1961, 57th Leg., p. 424, ch. 206, § 3.]

**PART FIVE**

**Art. 5.01. Procedure for Merger of Domestic Corporations**

A. Any two or more domestic corporations may merge into one of such corporations pursuant to a

plan of merger approved in the manner provided in this Act.

B. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

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

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

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

(4) The manner and basis of converting the shares of each merging corporation into shares, rights, other securities or obligations of the surviving corporation, and, if any shares of either merging corporation are not to be converted solely into shares, rights, other securities or obligations of the surviving corporation, the cash, property, shares, rights, other securities or obligations of any other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing them, which cash, property, shares, rights, other securities or obligations of any other corporation may be in addition to or in lieu of shares, rights, other securities or obligations of the surviving corporation.

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1971, 62nd Leg., p. 1173, ch. 276, § 2, eff. May 19, 1971.]

#### Art. 5.02. Procedure for Consolidation of Domestic Corporations

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

B. The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

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

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

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

(4) The manner and basis of converting the shares of each corporation into shares, rights, other securities or obligations of the new corporation, and, if any shares of either corporation are not to be converted solely into shares, rights, other securities or obligations of the new corpo-

ration, the cash, property, shares, rights, other securities or obligations of any other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing them, which cash, property, shares, rights, other securities or obligations of any other corporation may be in addition to or in lieu of shares, rights, other securities or obligations of the new corporation.

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1971, 62nd Leg., p. 1173, ch. 276, § 3, eff. May 19, 1971.]

#### Art. 5.03. Approval by Shareholders of Merger or Consolidation of Domestic Corporations

A. The board of directors of each domestic corporation, upon approving a plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting, not less than twenty (20) days before such meeting, in the manner provided in this Act for the giving of notice of meetings of shareholders, and shall state the purpose of the meeting whether the meeting be an annual or a special meeting. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

B. At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such corporation, unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares within each class of shares entitled to vote as a class thereon as well as of at least two-thirds of the outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1720, ch. 657, § 9, eff. June 17, 1967.]

#### Art. 5.04. Articles of Merger or Consolidation of Domestic Corporations

A. Upon the required approval by the shareholders of two or more corporations of a plan of merger or consolidation, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, verified by one of the officers of each corporation signing such articles, and shall set forth:

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

(2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

B. Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one (1) of such duplicate originals in his office.

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 5.05. Effective Date of Merger or Consolidation of Domestic Corporations

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 5.06. Effect of Merger or Consolidation of Domestic Corporations

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

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

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

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

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

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

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

(7) Repealed by Acts 1967, 60th Leg., p. 1729, ch. 657, § 19, eff. June 17, 1967.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1729, ch. 657, § 19, eff. June 17, 1967.]

**Art. 5.07. Merger or Consolidation of Domestic and Foreign Corporations**

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

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

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under whose laws such surviving or new corporation is to be governed and the address, including street and number, if any, of the registered or principal office of such surviving or new corporation in the state under whose laws it is to be governed; provided that no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing such merger or consolidation shall be adopted upon the affirmative vote of the holders of at least two-thirds of the outstanding shares of the domestic corporation cast at a meeting called and conducted in the same manner as provided by Article 5.03 of this Act.

(2) Each foreign corporation, if it is to transact business in this State, shall file with the Secretary of State of this State within thirty (30) days after the merger or consolidation, as the case may be, shall become effective, a copy of the plan, articles, or other document filed in the State of its incorporation for the purpose of effecting the merger or consolidation, certified by the public officer having custody of the original.

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

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

such domestic corporation against the surviving or new corporation.

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

(c) An agreement that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders.

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

C. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is a domestic corporation. If the surviving or new corporation is a foreign corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise. [Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1720, ch. 657, § 10, eff. June 17, 1967.]

**Art. 5.08. Conveyance by Corporation**

A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or a vice president or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or shareholders. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice president of the corporation, shall constitute prima facie evidence that such resolution of the board of directors or shareholders was duly adopted. [Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 5.09. Disposition of Assets Authorized by Board of Directors**

A. Except as otherwise provided in the articles of incorporation and except as provided in the next sentence of this section, the sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares of any other corpora-

tion, domestic or foreign, as shall be authorized by its board of directors, without authorization or consent of the shareholders. Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust or trust indenture and no authorization or consent of the shareholders shall be required for the validity thereof or for any sale pursuant to the terms thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 8.]

**Art. 5.10. Disposition of Assets Requiring Special Authorization of Shareholders**

A. A sale, lease, exchange, or other disposition (not including any pledge, mortgage, deed of trust or trust indenture unless otherwise provided in the articles of incorporation) of all, or substantially all, the property and assets, with or without the good will of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided for in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting shall state that the purpose, or one of the purposes, of such meeting is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting, the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, and, in the event any class of shares is entitled to vote as a class thereon, such authorization shall require in addition the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon.

(4) After such authorization by vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon such sale, lease,

exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 9; Acts 1967, 60th Leg., p. 1720, ch. 657, § 11, eff. June 17, 1967.]

**Art. 5.11. Rights of Dissenting Shareholders in the Event of Certain Corporate Actions**

A. Any shareholder of a domestic corporation shall have the right to dissent from any of the following actions:

(1) Any plan of merger or consolidation to which the corporation is a party;

(2) Any sale, lease, exchange or other disposition (not including any pledge, mortgage, deed of trust or trust indenture unless otherwise provided in the articles of incorporation) of all, or substantially all, the property and assets, with or without good will, of a corporation requiring the special authorization of the shareholders as provided by this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 10; Acts 1973, 63rd Leg., p. 1508, ch. 545, § 36, eff. Aug. 27, 1973.]

**Art. 5.12. Procedure for Dissent by Shareholders as to Said Corporate Actions**

A. In case any shareholder of any domestic corporation lawfully elects to exercise his right to dissent from any of the corporate actions referred to in the last preceding Article hereof, the following procedure shall be followed:

(1) Such shareholder shall file with the corporation, prior to the taking of the vote of shareholders on the proposed corporate action, a written objection to such proposed corporate action, setting out that his right to dissent will be exercised if such action is effective and giving his address, to which notice thereof shall be delivered or mailed in such event. If such corporate action be effected and such shareholder shall not have voted in favor thereof, the corporation shall, within ten (10) days after such corporate action is effected deliver or mail to such shareholder written notice thereof, and such shareholder may, within ten (10) days from the delivery or mailing of such notice, make written demand on the existing, surviving, or new corporation, as the case may be, domestic or foreign, for payment of the fair value of his shares. The fair value of such shares shall be the value thereof as of the day before the vote was taken authorizing such corporate action, excluding any appreciation or depreciation in anticipation of such proposed act. Such demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by him. Any shareholder failing to make demand within

the ten (10) day period shall be bound by such corporate action.

(2) Within twenty (20) days after receipt by the existing, surviving, or new corporation, as the case may be, of a demand for payment of the fair value of his shares made by such dissenting shareholder in accordance with Subsection (1) hereof, such corporation shall deliver or mail to such dissenting shareholder a written notice which shall either set out that the corporation accepts the amount claimed in such demand and agrees to pay such amount within ninety (90) days after the date on which such corporate action was effected, upon the surrender of the share certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of such estimate within ninety (90) days after the date on which such corporate action was effected, upon receipt of notice within sixty (60) days after such date from such shareholder that he agrees to accept such amount upon the surrender of the share certificates duly endorsed.

(3) If, within sixty (60) days after the date on which such corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the existing, surviving, or new corporation, as the case may be, payment therefor shall be made within ninety (90) days after the date on which such corporate action was effected, upon surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

B. If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the existing, surviving, or new corporation, as the case may be, do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the corporation, which shall, within ten (10) days after such service, file in the office of the clerk of the court in which such petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the corporation. If the petition shall be filed by the corporation, the petition shall be accompanied by such a duly verified list. The clerk of the court shall give notice of the time and place fixed for the hearing of such petition by registered mail to the corporation and to the shareholders shown upon such list at the addresses therein stated. The forms of

the notices by mail shall be approved by the court. All shareholders thus notified and the corporation shall thereafter be bound by the final judgment of the court.

C. After the hearing of such petition, the court shall determine the shareholders who have complied with the provisions of this Article and have become entitled to the valuation of and payment for their shares, and shall appoint one or more qualified appraisers to determine such value. Such appraisers shall have power to examine any of the books and records of the corporation the shares of which they are charged with the duty of valuing, and they shall make a determination of the fair value of the shares upon such investigation as to them may seem proper. The appraisers shall also afford a reasonable opportunity to the parties interested to submit to them pertinent evidence as to the value of the shares. The appraisers shall also have such power and authority as may be conferred on Masters in Chancery by the Rules of Civil Procedure or by the order of their appointment.

D. The appraisers shall determine the fair value of the shares of the shareholders adjudged by the court to be entitled to payment therefor and shall file their report respecting such value in the office of the clerk of the court, and notice of the filing of such report shall be given by the clerk to the parties in interest. Such report shall be subject to exceptions to be heard before the court both upon the law and the facts. The court shall by its judgment determine the fair value of the shares of the shareholders entitled to payment therefor and shall direct the payment of such value by the existing, surviving, or new corporation, together with interest thereon, to the date of such judgment, to the shareholders entitled thereto. The judgment shall be payable only upon, and simultaneously with, the surrender to the existing, surviving, or new corporation, as the case may be, of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholders shall cease to have any interest in such shares, or in the corporation. The court shall allow the appraisers a reasonable fee as court costs and all court costs shall be allotted between the parties in such manner as the court shall determine to be fair and equitable.

E. Shares acquired by the existing, surviving, or new corporation, as the case may be, pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this Article provided, may be held and disposed of by such corporation as in the case of other treasury shares.

F. The provisions of this Article shall not apply to a merger if, on the date of the filing of the articles of merger, the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic or foreign, that are parties to the merger.

G. In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to any corporate action referred to in

Article 5.11 of this Act is the exclusive remedy for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action; and if the existing, surviving, or new corporation, as the case may be, complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1721, ch. 657, § 12, eff. June 17, 1967.]

#### Art. 5.13. Provisions Affecting Remedies of Dissenting Shareholders

A. Any shareholder who has demanded payment for his shares in accordance with Article 5.12 shall not thereafter be entitled to vote or exercise any other rights of a shareholder except the right to receive payment for his shares pursuant to the provisions of said Article 5.12 and the right to maintain an appropriate action to obtain relief on the ground that the corporate action would be or was fraudulent, and the respective shares for which payment has been demanded shall not thereafter be considered outstanding for the purposes of any subsequent vote of shareholders.

B. Within twenty (20) days after demanding payment for his shares in accordance with Article 5.12, each shareholder so demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure so to do shall, at the option of the corporation, terminate his rights under Article 5.12 unless a court of competent jurisdiction for good and sufficient cause shown shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation together with the name of the original dissenting holder of such shares and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

C. Any shareholder who has demanded payment for his shares in accordance with Article 5.12 may withdraw such demand at any time before payment for his shares or before any petition has been filed pursuant to Article 5.12 asking for a finding and determination of the fair value of such shares, but no such demand may be withdrawn after such payment has been made or, unless the corporation shall consent thereto, after any such petition has been filed. If, however, such demand shall be withdrawn as hereinbefore provided, or if pursuant to Section B of this Article the corporation shall terminate the shareholder's rights under Article 5.12, or if no petition asking for a finding and determination of fair value of such shares by a court shall have been filed

within the time provided in Article 5.12, or if after the hearing of a petition filed pursuant to Article 5.12, the court shall determine that such shareholder is not entitled to the relief provided by Article 5.12, then, in any such case, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the corporate action from which he dissented and shall be bound thereby, the right of such shareholder to be paid the fair value of his shares shall cease, and his status as a shareholder shall be restored without prejudice to any corporate proceedings which may have been taken during the interim, and such shareholder shall be entitled to receive any dividends or other distributions made to shareholders in the interim.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1723, ch. 657, § 13, eff. June 17, 1967.]

#### Art. 5.14. Derivative Suits

##### Definitions

A. In this Article:

(1) A "derivative suit" is a suit brought in the right of a domestic or foreign corporation.

(2) "Expenses" are reasonable expenses, incurred in the defense of a derivative suit, including:

(a) Fees of attorneys, and

(b) Expenses for which a corporate defendant may be required to indemnify another defendant.

##### Prerequisites

B. A derivative suit may be brought in this State only if:

(1) The plaintiff was a record or beneficial owner of shares, or of an interest in a voting trust for shares, at the time of the transaction of which he complains, or his shares or interest thereafter devolved upon him by operation of law from a person who was such an owner at that time, and

(2) The initial pleading in the suit states:

(a) The ownership required by Subsection (1), and

(b) With particularity, the efforts of the plaintiff to have suit brought for the corporation by the board of directors, or the reasons for not making any such efforts.

##### Security for expenses

C. The court having jurisdiction in a derivative suit may, in its discretion, require the plaintiff or plaintiffs to give security for the expenses incurred or expected to be incurred by one or more of the defendants. The court may, in its discretion, at any time increase or decrease the amount of the security on a showing that the security provided is then inadequate or excessive.

## Inability to give security

D. If plaintiff is unable to give security, he may file an affidavit in accordance with the Texas Rules of Civil Procedure, and those rules shall control.

## Failure to give security

E. If plaintiff fails to give the security within a reasonable time set by the court, the court shall (except as provided in Section D of this Article) dismiss the suit without prejudice.

## Judgment for expenses

F. The court having jurisdiction in a derivative suit may, upon final judgment for one or more defendants and a finding that the suit was brought without reasonable cause against such defendants, require the plaintiff to pay expenses to such defendants, whether or not security has been required. [Acts 1965, 59th Leg., p. 698, ch. 332, § 1; Acts 1973, 63rd Leg., p. 1508, ch. 545, § 37, eff. Aug. 27, 1973.]

**Art. 5.15. [Antitrust Laws; Dissenting Stockholders; Savings Clause]<sup>1</sup>**

Nothing contained in Part 5 of this Act shall ever be construed as affecting, nullifying or repealing the Anti-trust laws or as abridging any right or rights of a dissenting stockholder under existing laws.

[Formerly art. 5.14. Acts 1955, 54th Leg., p. 239, ch. 64. Renumbered art. 5.15 by Acts 1965, 59th Leg., p. 698, ch. 332, § 2.]

<sup>1</sup> Article heading editorially supplied.

**Art. 5.16. Merger of Subsidiary or Subsidiaries into Parent Corporation**

## Qualifications

A. In any case in which at least ninety (90%) percent of the outstanding shares of each class of a corporation or corporations is owned by another corporation, and one of such corporations is a domestic corporation and the other or others are domestic corporations or foreign corporations organized under the laws of a jurisdiction which permit such a merger, the corporation having such share ownership may merge such other corporation or corporations into itself by executing, verifying and filing articles of merger in accordance with Section B of this Article.

## Execution of articles; contents

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

(1) The name of the parent corporation, and the name or names of the subsidiary corporations and the respective jurisdiction under which each such corporation is organized.

(2) The number of outstanding shares of each class of each subsidiary corporation and the number of such shares of each class owned by the parent corporation.

(3) A copy of the resolution adopted by the board of directors of the parent corporation to so merge and the date of the adoption thereof. If the parent corporation does not own all the outstanding shares of each class of each subsidiary corporation party to the merger, the resolution shall state the terms and conditions of the merger, including the securities, cash or other property to be used, paid or delivered by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation.

(4) If the surviving corporation is a foreign corporation, the address, including street number if any, of its registered or principal office in the jurisdiction under whose laws it is governed. It shall comply also with the provisions of Article 5.07B(3) of this Act.

## Delivery to secretary of state; duties

C. Duplicate originals of the articles of merger shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one (1) of such duplicate originals in his office.

(3) Issue a certificate of merger to which he shall affix the other duplicate original and deliver them to the surviving corporation or its representative.

## Effective date and effect

D. The effective date and the effect of such merger shall be the same as provided in Articles 5.05 and 5.06 of this Act if the surviving corporation is a domestic corporation. If the surviving corporation is a foreign corporation, the effective date and the effect of such merger shall be the same as in the case of the merger of domestic corporations except in so far as the laws of such other jurisdiction provide otherwise.

## Remedy of minority shareholders

E. In the event all of the shares of a subsidiary domestic corporation party to a merger effected under this Article are not owned by the parent corporation immediately prior to the merger, the surviving corporation shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of such subsidiary domestic corporation a copy of the articles of merger and notify him that the merger has become effective. In case any such shareholder elects to demand payment for his shares, the following procedure shall be followed:

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of

the articles of merger make written demand on the surviving corporation, domestic or foreign, for payment of the fair value of his shares. The fair value of such shares shall be the value thereof as of the day before the effective date of the merger, excluding any appreciation or depreciation in anticipation of such proposed act. Such demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by him. Any shareholder failing to make demand within the twenty (20) day period shall be bound by such corporate action.

(2) Within ten (10) days after receipt by the surviving corporation of a demand for payment of the fair value of his shares made by such dissenting shareholder in accordance with Subsection (1) hereof, such corporation shall deliver or mail to such dissenting shareholder a written notice which shall either set out that the corporation accepts the amount claimed in such demand and agrees to pay such amount within ninety (90) days after the date on which such corporate action was effected, upon the surrender of the share certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of such estimate within ninety (90) days after the date on which such corporation action was effected, upon receipt of notice within sixty (60) days after such date from such shareholder that he agrees to accept such amount upon the surrender of the share certificates duly endorsed.

(3) If, within sixty (60) days after the date on which such corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving corporation, payment therefor shall be made within ninety (90) days after the date on which such corporate action was effected, upon surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(4) If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving corporation do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12 and set forth in Article 5.14.

(5) In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to such corporate action is the exclusive remedy for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action; and if the surviving corporation complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action.

Exemption from other articles

F. Except as otherwise provided in this Article, the provisions of Articles 5.11, 5.12 and 5.13 of this Act shall not be applicable to a merger effected under the provisions of this Article.  
[Acts 1969, 61st Leg., p. 844, ch. 280, § 1, eff. May 22, 1969.]

PART SIX

**Art. 6.01. Voluntary Dissolution by Incorporators or Directors**

A. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators or its directors at any time in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators or directors, and verified by them, and shall set forth:

- (a) The name of the corporation.
- (b) The date of issuance of its certificate of incorporation.
- (c) That none of its shares has been issued.
- (d) That the corporation has not commenced business.
- (e) That the amount, if any, actually paid on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
- (f) That no debts of the corporation remain unpaid.
- (g) That a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

- (a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.
- (b) File one of such duplicate originals in his office.

(c) Issue a certificate of dissolution, to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the incorporators or their representatives. Upon the issuance of such certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1724, ch. 657, § 14, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1509, ch. 545, § 38, eff. Aug. 27, 1973.]

#### Art. 6.02. Voluntary Dissolution by Consent of Shareholders

A. A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

B. Upon the execution of such written consent and after compliance with other provisions of this Act, the corporation shall file articles of dissolution as provided in this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1724, ch. 657, § 14, eff. June 17, 1967.]

#### Art. 6.03. Voluntary Dissolution by Act of Corporation

A. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon, as well as the affirm-

ative vote of two-thirds of the total outstanding shares.

B. Upon the adoption of such resolution and after compliance with other provisions of this Act, the corporation shall file articles of dissolution as provided in this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1725, ch. 657, § 14, eff. June 17, 1967.]

#### Art. 6.04. Procedure Before Filing Articles of Dissolution

A. Before filing articles of dissolution:

(1) The corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The corporation shall cause written notice by registered mail of its intention to dissolve to be mailed to each known creditor of and claimant against the corporation.

(3) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, or discharge its liabilities and obligations, or make adequate provision for payment and discharge thereof, and do all other acts required to liquidate its business and affairs; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations. After paying or discharging all its obligations, or making adequate provision for payment and discharge thereof, the corporation shall then distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(4) The corporation, at any time during the liquidation of its business and affairs, may make application to any district court of this State in the county in which the registered office of the corporation is situated to have the liquidation continued under the supervision of such court as provided in this Act.

[Acts 1967, 60th Leg., p. 1725, ch. 657, § 14, eff. June 17, 1967.]

#### Art. 6.05. Revocation of Voluntary Dissolution Proceedings

A. At any time prior to the issuance of a certificate of dissolution by the Secretary of State, a corporation may revoke voluntary dissolution proceedings:

(1) By the written consent of all of its shareholders.

(2) By the act of the corporation in the following manner:

(a) The board of directors shall adopt a resolution recommending that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(b) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of special meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon, as well as two-thirds of the total outstanding shares.

B. Upon the revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the corporation may again carry on its business.

[Acts 1967, 60th Leg., p. 1726, ch. 657, § 14, eff. June 17, 1967.]

#### Art. 6.06. Articles of Dissolution

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

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) That all debts, obligations and liabilities of the corporation have been paid or discharged or

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

(5) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests or that no property remained for distribution to shareholders after applying it as far as it would go to the just and equitable payment of the liabilities and obligations of the corporation.

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

(7) If the corporation elected to dissolve by written consent of all shareholders:

(a) A copy of the written consent to dissolve, and a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

(8) If the corporation elected to dissolve by act of the corporation:

(a) A copy of the resolution to dissolve, and a statement that such resolution was adopted by the shareholders of the corporation and the date of the adoption thereof.

(b) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(c) The number of shares voted for and against such resolution respectively and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution respectively.

[Acts 1967, 60th Leg., p. 1727, ch. 657, § 14, eff. June 17, 1967.]

#### Art. 6.07. Filing Articles of Dissolution

A. Duplicate originals of such articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

B. The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided by the laws of this State.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1727, ch. 657, § 14, eff. June 17, 1967.]

#### Arts. 6.08 to 6.12. Omitted

*Part 6 of the Texas Business Corporation Act, Acts 1955, 54th Leg., p. 239, ch. 64, consisting of articles 6.01 to 6.12 was amended by Acts 1967, 60th Leg., p. 1727, ch. 657, § 14 to consist of articles 6.01 to 6.07, as set out, ante.*

### PART SEVEN

#### Art. 7.01. Involuntary Dissolution

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

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

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

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

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

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

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

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

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

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

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 12 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

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

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

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

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

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1969, 61st Leg., p. 2484, ch. 835, § 3, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 989, ch. 399, § 2(K), eff. Jan. 1, 1974.]

**Art. 7.02. Notification to Attorney General, Notice to Corporation and Opportunity of Corporation to Cure Default**

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

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

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General shall then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

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

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

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1969, 61st Leg., p. 2485, ch. 835, § 4, eff. June 18, 1969.]

**Art. 7.03. Venue and Process**

A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. Citation shall issue and be served as provided by law. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two successive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice. [Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.04. Appointment of Receiver for Specific Corporate Assets**

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve such assets and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if other remedies available either at law or in equity are determined by the court to be inadequate and only in the following instances:

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

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, re-

moved, or materially injured, or that the condition of the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt.

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

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds. [Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.05. Appointment of Receiver to Rehabilitate Corporation**

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

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

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

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

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

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

(e) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

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

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

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

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1961, 57th Leg., p. 319, ch. 169, § 1.]

Section 2 of the Act 1961, 57th Leg., p. 319, ch. 169 provides: "The fact that the present law in this state authorizing the appointment of receivers where the shareholders of a corporation are deadlocked in voting power and are unable to elect directors is vague, uncertain and indefinite; and the fact that the foregoing amendment would correct such situation by bringing the Texas Business Corporation Act into conformity with the modern business corporation acts of other states as well as the Model Business Corporation Act promulgated by the Committee on Corporate Laws of the American Bar Association, upon which Model Business Corporation Act, the Texas Business Corporation Act is largely patterned, creates an emergency and an imperative public necessity that the Constitutional Rule requiring that bills be read on three several days in each House be suspended, and said Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted."

#### Art. 7.06. Jurisdiction of Court to Liquidate Assets and Business of Corporation and Receiverships Therefor

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

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

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

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

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

B. In the event the condition of the corporation necessitating the appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver

being directed to redeliver to the corporation all its remaining properties and assets.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1727, ch. 657, § 15, eff. June 17, 1967.]

#### Art. 7.07. Qualifications, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships

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

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

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

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

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

assets and business, that court shall have exclusive jurisdiction of the corporation and all its properties, wherever situated.

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.08. Shareholders Not Necessary Parties Defendant to Receivership or Liquidation Proceedings**

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.09. Decree of Involuntary Dissolution**

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.10. Filing of Decree of Dissolution**

A. In any case in which the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of

the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.11. Deposit with State Treasurer of Amount Due Certain Shareholders and Creditors**

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 7.12. Survival of Remedy after Dissolution**

A. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its officers, directors, or shareholders, for any right or claim existing, or any liability

incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### PART EIGHT

##### Art. 8.01. Admission of Foreign Corporation

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

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

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceedings, or effecting the settlement thereof or the settlement of claims or disputes to which it is a party;
- (2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities;
- (5) Voting the stock of any corporation which it has lawfully acquired;
- (6) Effecting sales through independent contractors;
- (7) Creating evidences of debt, mortgages, or liens on real or personal property;

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

(9) Transacting any business in interstate commerce;

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

(11) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this state, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by one or more non-residents of this state, or by one or more foreign corporations, if the exercise of such powers, in any such case, will not involve activities which would be deemed to constitute the transacting of business in this state in the case of a foreign corporation acting in its own right;

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 11.]

##### Art. 8.02. Powers of Foreign Corporation

A. A foreign corporation which shall have received a certificate of authority under this Act shall, for a period of ten (10) years from the granting of such certificate or a renewal thereof, or until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 8.03. Corporate Name of Foreign Corporation**

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

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one (1) of such words, or such corporation shall, for use in this state, add at the end of its name one (1) of such words or an abbreviation thereof.

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in the manner provided in this Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. In the event that such consent is not given, a certificate of authority shall be issued as provided in this Act to any foreign corporation having a name the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided such foreign corporation files an assumed name certificate, setting forth a different name, with the Secretary of State and with county clerks as provided by Article 5924, Revised Civil Statutes of Texas, 1925, as amended, and provided further, that no such foreign corporation shall transact or conduct any business in this state except under such assumed name.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1961, 57th Leg., p. 423, ch. 206, § 4; Acts 1963, 58th Leg., p. 1310, ch. 500, § 1.]

**Art. 8.04. Change of Name by Foreign Corporation**

A. Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this State until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the provisions of this Act.

[Acts 1973, 63rd Leg., p. 1509, ch. 545, § 39, eff. Aug. 27, 1973.]

Former article 8.04 was repealed by Acts 1967, 60th Leg., p. 1729, ch. 657, § 20, eff. June 17, 1967.

2 West's Tex.Stats. & Codes—4

**Art. 8.05. Application for Certificate of Authority**

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

(1) The name of the corporation and the State or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State.

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

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

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

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State.

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

(8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.

(11) A statement that consideration of the value of at least One Thousand Dollars (\$1,000) has been paid for the issuance of shares.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1510, ch. 545, § 40, eff. Aug. 27, 1973.]

**Art. 8.06. Filing of Application for Certificate of Authority**

A. Duplicate originals of the application of the corporation for a certificate of authority, shall be delivered to the Secretary of State, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of

which it is incorporated. If the Secretary of State finds that the application conforms to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to transact business in this State to which he shall affix the other duplicate original application.

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1510, ch. 545, § 41, eff. Aug. 27, 1973.]

#### Art. 8.07. Effect of Certificate of Authority

A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to transact business in this State for those purposes set forth in its application, and such certificate shall be conclusive evidence of such right of the corporation to transact business in this State for such purposes, except as against this State in a proceeding to revoke such certificate.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1510, ch. 545, § 47, eff. Aug. 27, 1973.]

#### Art. 8.08. Registered Office and Registered Agent of Foreign Corporation

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

(1) A registered office which may be, but need not be, the same as its place of business in this State.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 8.09. Change of Registered Office or Registered Agent of Foreign Corporation

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

- (1) The name of the corporation.
- (2) The post-office address of its then registered office.

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

(4) The name of its then registered agent.

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

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

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors.

B. Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement. Duplicate originals of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Return the other of such duplicate originals to the corporation or its representative.

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

D. Any registered agent of a corporation may resign

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

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

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

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

(2) File one of such originals in his office.

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1969, 61st Leg., p. 2485, ch. 835, § 5, eff. June 18, 1969; Acts 1967, 60th Leg., p. 1728, ch. 657, § 16, eff. June 17, 1967; Acts 1969, 61st Leg., p. 2486, ch. 835, § 6, eff. June 18, 1969.]

**Art. 8.10. Service of Process on Foreign Corporation**

A. The president and all vice presidents of a foreign corporation authorized to transact business in this State and the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

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

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

D. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 124, ch. 63, § 1, eff. April 26, 1973.]

**Art. 8.11. Amendment to Articles of Incorporation of Foreign Corporation**

A. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this State are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the Secretary of State a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing

thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this State, nor authorize such corporation to transact business in this State under any other name than the name set forth in its certificate of authority.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 8.12. Merger of Foreign Corporation Authorized to Transact Business in this State**

A. Whenever a foreign corporation authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, no domestic corporation being a party to such merger, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this State unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this State a purpose or purposes other than those authorized by its existing certificate of authority.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 8.13. Amended Certificate of Authority**

A. In the event a foreign corporation authorized to transact business in this State shall change its corporate name, or in the event such corporation desires to pursue in this State purposes other than, or in addition to, those authorized by its existing certificate of authority, it shall procure an amended certificate of authority by making application therefor to the Secretary of State.

B. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 8.14. Withdrawal of Foreign Corporation**

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal: In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) That the corporation is not transacting business in this state;

(3) That the corporation surrenders its authority to transact business in this state;

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Secretary of State;

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him;

(6) A statement that all sums due, or accrued, to this state have been paid, or that adequate provision has been made for the payment thereof;

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this state.

B. The application for withdrawal may be made on forms promulgated by the Secretary of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 12.]

#### Art. 8.15. Filing of Application for Withdrawal

A. Duplicate originals of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

B. The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 8.16. Revocation of Certificate of Authority

A. The certificate of authority of a foreign corporation to transact business in this state may be

revoked by a decree of the district court for the county in which the registered office of the corporation in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes expressed in its certificate of authority to transact business in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law.

B. The certificate of authority of a foreign corporation to transact business in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

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

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

(3) The corporation has failed to file in the office of the Secretary of State any amendment to its articles of incorporation or any articles of merger or consolidation within the time prescribed by this Act; or

(4) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state.

C. No foreign corporation shall have its certificate of authority to transact business in this state revoked under Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees, penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

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

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 12 months from the date of dissolution, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

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

When the application for reinstatement is approved and filed by the Secretary of State, the corporate authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between revocation and reinstatement.

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to transact business in this State in a district court of the county in which the registered office of the foreign corporation in this State is situated or in a district court of Travis County. The court may revoke the foreign

corporation's certificate of authority if it is established that:

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

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

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

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1969, 61st Leg., p. 2486, ch. 835, § 7, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 989, ch. 399, § 2(L), eff. Jan. 1, 1974.]

#### Art. 8.17. Filing of Decree of Revocation

A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to transact business in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### Art. 8.18. Transacting Business Without Certificate of Authority

A. No foreign corporation which is transacting, or has transacted, business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State (whether brought directly by the corporation or in the form of a derivative action by a shareholder) on any cause of action arising out of the transaction of business in this State, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding on any such cause of action be maintained in any court of this State by any successor, assignee, or legal representative of such foreign corporation, until a certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

C. A foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an

amount equal to all fees and franchise taxes which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and franchise taxes. In addition to the penalties and payments thus prescribed, such corporation shall forfeit to this State an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each month or fraction thereof it shall have transacted business in this State without a certificate. The Attorney General shall bring suit to recover all amounts due this State under the provisions of this section.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

#### PART NINE

##### Art. 9.01. Interrogatories by Secretary of State

A. The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual, they shall be answered by him, and if directed to a corporation, they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of the provisions of this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

##### Art. 9.02. Information Disclosed by Interrogatories

A. Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

##### Art. 9.03. Powers of Secretary of State

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

##### Art. 9.04. Appeals from Secretary of State

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to transact business in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

##### Art. 9.05. Certificates and Certified Copies to be Received in Evidence

A. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated, and shall be subject to recordation. A certificate by the Secretary of State, under the great seal of this State, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

##### Art. 9.06. Forms to be Promulgated by Secretary of State

A. Forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State. The use of such forms, however, shall not be

mandatory, except in instances in which the law may specifically so provide.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 9.07. Time for Filing Documents in the Office of the Secretary of State**

A. Whenever any document is required to be filed in the office of the Secretary of State by any provision of this Act, the requirement of the statute shall be construed to involve the requirement that same be so filed with reasonable promptness.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 9.08. Greater or Lesser Voting Requirements for Certain Corporate Actions**

A. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater or lesser number of shares, or of any class or series thereof, than is required by this Act with respect to such action, the provisions of the articles of incorporation shall control, provided the lesser number constitutes a majority or more.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1973, 63rd Leg., p. 1511, ch. 545, § 43, eff. Aug. 27, 1973.]

**Art. 9.09. Waiver of Notice**

A. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 9.10. Actions Without a Meeting; Telephone Meetings**

A. Any action required by this Act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Secretary of State.

B. Unless otherwise restricted by the articles of incorporation or by-laws, any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

C. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or by-laws, shareholders, members of the board of directors, or members of any committee designated by such board, may participate in and hold a meeting of such shareholders, board, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1967, 60th Leg., p. 1728, ch. 657, § 17, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1511, ch. 545, § 44, eff. Aug. 27, 1973.]

**Art. 9.11. Application to Foreign and Interstate Commerce**

A. The provisions of this Act shall apply to commerce with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 9.12. Reservation of Power**

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 9.13. Effect of Invalidity of Part of This Act**

A. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection, section, or Article of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, or Article of this Act so adjudged to be invalid or unconstitutional.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

**Art. 9.14. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporations**

A. This Act does not apply to domestic corporations organized for the purpose of operating banks, trust companies, building and loan associations or companies, insurance companies of every type or character that operate under insurance laws of this State and corporate attorneys in fact for reciprocal or inter-insurance exchanges, railroad companies, cemetery companies, cooperatives or limited cooperative associations, labor unions, or abstract and title

insurance companies whose purposes are provided for and powers are prescribed by Chapter 9 of the Insurance Code of this State,<sup>1</sup> or to domestic or foreign corporations organized for the purpose of operating nonprofit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes, or to any foreign corporations which are granted authority to transact business within this State under any special statutes; provided, however, that if any of said excepted domestic corporations were heretofore or are hereafter organized under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or any such excepted foreign corporations were heretofore or are hereafter granted authority to transact business within this State under any special statute which contains no provisions in regard to some of the matters provided for in this Act in respect of foreign corporations, or if such special statutes specifically provide that the general laws for incorporation or for the granting of a certificate of authority to transact business in this State, as the case may be, shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

B. For a period of five (5) years from and after the effective date of this Act, it shall not apply to any domestic corporation duly chartered or existing on said effective date or to any foreign corporation holding, on that date, a valid permit to do business in this State, unless such domestic or foreign corporation shall, during such period of five (5) years, voluntarily elect to adopt the provisions of this Act and shall comply with the procedure prescribed by Section C of this Article.

C. During the period of five (5) years from and after the effective date of this Act, any domestic corporation duly chartered or existing prior to said effective date and any foreign corporation holding a valid permit to do business in this State, prior to the effective date of this Act, may voluntarily elect to adopt the provisions of this Act and may become subject to its provisions by taking the following steps:

(1) As to domestic corporations, a resolution reciting that the corporation voluntarily adopts this Act shall be adopted by the board of directors and shareholders by the procedure prescribed by this Act for the amendment of articles of incorporation. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this Act.

(2) Upon adoption of the required resolution or resolutions, an instrument shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the

officers signing such statement, which shall set forth:

(a) The name of the corporation.

(b) Each resolution adopted by the corporation.

(c) The date of the adoption of each resolution.

(d) The post office address of its initial registered office, and the name of its initial registered agent at such address.

(3) Duplicate originals of such document shall be delivered to the Secretary of State. If the Secretary of State finds that such document conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Deliver the other duplicate original to the corporation or its representative.

(4) Upon the filing of such document, all provisions of this Act shall thereafter apply to the corporation.

D. Except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations organized after the date on which this Act becomes effective and to all foreign corporations transacting, or seeking to transact, business within this State and not holding, on the effective date of this Act, a valid permit so to do, and to all domestic and foreign corporations electing within five (5) years to adopt this Act and manifesting their election in the manner provided in Section C of this Article.

E. Effective September 6, 1960, this Act shall apply to all domestic corporations and to all foreign corporations transacting or seeking to transact business in this State, except for the exceptions and limitations of Section A of this Article and with the further exception that no domestic corporation existing at the time that this Act becomes effective and no foreign corporation holding a valid permit to do business in this State at the time this Act becomes effective, which has not adopted this Act prior to September 6, 1960 by complying with Section C of this Article and which has not amended its articles of incorporation or its certificate of authority, as the case may be, after this Act becomes applicable thereto, shall be deemed to have failed to comply with the provisions of this Act by reason of the fact that:

(1) The name of such corporation does not conform with the provisions of Articles 2.05A(1) and 8.03A(1) of this Act provided such name does conform with the other provisions of this Act and all other laws of this State.

(2) Such corporation has never received for the issuance of shares consideration of the value

of at least One Thousand Dollars (\$1,000) in conformity with the minimum requirements of this Act.

If any such corporation should amend its articles of incorporation or its certificate of authority, as the case may be, after this Act becomes applicable thereto, such corporation must, simultaneously with or prior to filing such amendment with the Secretary of State, take such action as may be necessary to bring such corporation into conformity with the provisions of this Act.

F. Except for domestic and foreign corporations organized for the purposes set forth in Section A above, each domestic corporation existing on September 6, 1955 which meanwhile has not been dissolved nor adopted this Act by complying with Section C of this Article and each foreign corporation holding a valid permit to do business in this State on September 6, 1955 which meanwhile has not surrendered its permit nor adopted this Act by complying with Section C of this Article, shall execute and file, as a part of its annual report required to be filed for franchise tax purposes under Article 7089 of the Revised Civil Statutes of Texas between January 1 and March 15, 1960, the following described statement:

(1) Such statement shall be executed in duplicate by the president or a vice-president and by the secretary or an assistant secretary of the corporation, and verified by one of the officers signing such statement, and shall set forth:

- (a) The name of the corporation;
- (b) The post office address of its initial registered office, and the name of its initial registered agent at such address;
- (c) That such designation and appointment was authorized by resolution duly adopted by its board of directors.

(2) Duplicate originals of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall when all fees and franchise taxes have been paid as prescribed by law:

- (a) Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
- (b) File one of such duplicate originals in his office;
- (c) Deliver the other duplicate original to the corporation or its representative.

(3) No fee shall be charged for the filing of such statement.

(4) Such statement shall not become effective until September 6, 1960, and the registered office and registered agent designated therein may be changed at any time in accordance with the provisions of this Act.

(5) Such statement shall be deemed to be a part of the annual report for franchise tax

purposes, and failure to file such statement shall subject the corporation to the penalties set forth in Articles 7089 et seq. of the Revised Civil Statutes of Texas for failure to file an annual report.

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1959, 56th Leg., p. 224, ch. 132, §§ 1, 2; Acts 1959, 56th Leg., p. 224, ch. 132, § 3.]

<sup>1</sup> Insurance Code, arts. 9.01-9.27.

#### Art. 9.15. Extent to Which Existing Laws Shall Remain Applicable to Corporations

A. Except as provided in the last preceding Article, existing corporations shall continue to be governed by the laws heretofore applicable thereto.

B. Except as provided in Section B of Article 9.16 of this Act, any special limitations, obligations, liabilities, and powers, applicable to a particular kind of corporation for which special provision is made by the laws of this State, including, (but not excluding other corporations) those corporations subject to supervision under Article 1524a of the Revised Civil Statutes of Texas,<sup>1</sup> shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities, and powers.

C. Provided that nothing in this Act shall in anywise affect or nullify the Antitrust Laws of this State.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

<sup>1</sup> Civil Statutes, art. 1524a.

#### Art. 9.16. Repeal of Existing Laws; Extent and Effect Thereof

A. Subject to the provisions of the two last preceding Articles of this Act and of Section C of Article 2.02 of this Act and Section B of this Article, and excluding any existing general act not inconsistent with any provision of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.

B. Chapter 15 of Title 32, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> is hereby repealed effective five (5) years after the date on which this Act becomes effective; provided that such Chapter 15, Title 32, shall not hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.

C. The repeal of a prior act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

<sup>1</sup> Civil Statutes, arts. 1495-1507.

## PART TEN

## Art. 10.01. Filing Fees

A. The Secretary of State is authorized and required to collect for the use of the State the following fees:

- (1) Filing articles of incorporation of a domestic corporation and issuing a certificate of incorporation, One Hundred Dollars (\$100.00).
- (2) Filing articles of amendment of a domestic corporation and issuing a certificate of amendment, One Hundred Dollars (\$100.00).
- (3) Filing articles of merger or consolidation, whether the surviving or new corporation be a domestic or foreign corporation, Two Hundred Dollars (\$200.00).
- (4) Filing an application of a foreign corporation for an original or renewal of a certificate of authority to transact business in this State and issuing such a certificate of authority, Five Hundred Dollars (\$500.00).
- (5) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing such an amended certificate of authority, One Hundred Dollars (\$100.00).
- (6) Filing a copy of an amendment or supplement to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State, One Hundred Dollars (\$100.00).
- (7) Filing restated articles of incorporation of a domestic corporation, Two Hundred Dollars (\$200.00).
- (8) Filing application for reservation of corporate name and issuing certificate therefor, Ten Dollars (\$10.00).
- (9) Filing notice of transfer of reserved corporate name and issuing a certificate therefor, Ten Dollars (\$10.00).
- (10) Filing application for registration of corporate name and issuing a certificate therefor, Fifty Dollars (\$50.00).
- (11) Filing application for renewal of registration of corporate name and issuing a certificate therefor, Fifty Dollars (\$50.00).
- (12) Filing statement of change of registered office or registered agent, or both, Ten Dollars (\$10.00).
- (13) Filing statement of change of address of registered agent, Ten Dollars (\$10.00).
- (14) Filing statement of resolution establishing series of shares or filing statement of provisions to be incorporated by reference, Ten Dollars (\$10.00).
- (15) Filing statement of cancellation of redeemable shares, Ten Dollars (\$10.00).

(16) Filing statement of cancellation of re-acquired shares, Ten Dollars (\$10.00).

(17) Filing statement of reduction of stated capital, Ten Dollars (\$10.00).

(18) Filing articles of dissolution and issuing certificate therefor, Ten Dollars (\$10.00).

(19) Filing application for withdrawal and issuing certificate therefor, Ten Dollars (\$10.00).

(20) Filing certificate from home state that foreign corporation is no longer in existence in said state, Ten Dollars (\$10.00).

(21) Maintaining a record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock company, partnership, or non-resident natural person, Ten Dollars (\$10.00).

[Acts 1955, 54th Leg., p. 239, ch. 64; Acts 1957, 55th Leg., p. 111, ch. 54, § 13; Acts 1961, 57th Leg., p. 451, ch. 224, § 1, eff. May 25, 1961; Acts 1967, 60th Leg., p. 1729, ch. 657, § 18, eff. June 17, 1967; Acts 1969, 61st Leg., p. 2701, ch. 884, § 1, eff. Sept. 1, 1969.]

## PART ELEVEN

## Art. 11.01. Emergency Clause

A. The fact that existing laws of the State of Texas have been amended from time to time over a period of some seventy (70) years and more without any adoption meanwhile of a complete Act relating to business corporations generally, the provisions of which are consistent with one another; the fact that with so many amendments of the corporation laws applicable to business corporations generally over so many years there have developed many uncertainties in the corporation laws of this State and with the result that there is now an imperative need for clarification of certain provisions of the existing laws; the fact that all of the other states than Texas in which large and important business is transacted have adopted in recent years modern corporation laws and with the result that Texas citizens are increasingly prone to organize their corporate ventures under the laws of other states than the laws of Texas because Texas does not have such a modern act; and the fact that Texas in such connection is losing a substantial volume of corporate enterprise which it should otherwise gain from and after the time that a modern business corporation Act becomes effective in Texas and is losing tax income from ad valorem taxes, filing fees and otherwise meanwhile; all such facts create an emergency and public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended and said Rule is hereby suspended; and require that this Act take effect and be in force from and after the date of its enactment, and it is so enacted.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

# TITLE 32.

## CORPORATIONS

Chapter	Article
1. Texas Miscellaneous Corporation Laws Act .....	1302-1.01
2. Creation of Corporations [Repealed] .....	1303
3. General Provisions .....	1319
4. Lands [Repealed] .....	1359
5. Books, Records, Etc. [Repealed] .....	1366
6. Liens for Fines, Etc. [Repealed] .....	1372
7. Insolvent Corporations [Repealed] .....	1379
8. Dissolution of Corporations [Repealed] .....	1387
9. Non-Profit, Religious, Charitable and Educational .....	1396-1.01
10. Public Utilities .....	1416
11. Roads .....	1447
12. Bridges, Ferries and Causeways .....	1466
13. Channel and Dock [Repealed] .....	1478
14. Deep Water [Repealed] .....	1483
15. Oil, Gas, Salt, Etc. [Repealed] .....	1495
16. Waste Water Corporations .....	1508
17. Trust Companies and Investments .....	1513
18. Miscellaneous .....	1525
19. Foreign Corporations [Repealed] .....	1529
19A. Non-Par Corporations [Repealed] .....	1538a

### CHAPTER ONE. TEXAS MISCELLANEOUS CORPORATION LAWS ACT

#### PART ONE

Article
1302. Repealed.
1302a to 1302i. Repealed.
1302-1.01. Short Title, Captions, Parts, Articles, Sections, Subsections, and Paragraphs.
1302-1.02. Synonymous Terms.
1302-1.03. Applicability of Business Corporation Act, Texas Non-Profit Corporation Act, and this Act.

#### PART TWO

1302-2.01. Married Women.
1302-2.02. Notice by Firm.
1302-2.03. Ostensible Corporation; Debt.
1302-2.04. Construction of Provision as to Exclusive Right of Trustee to Sue.
1302-2.05. Bonds, Debentures and Other Evidence of Indebtedness; Manner of Issuance; Facsimile Signatures and Seal.
1302-2.06. Consideration for Indebtedness; Guaranties.
1302-2.07. Limited Survival after Dissolution.
1302-2.08. Affidavit of a Foreign Corporation.
1302-2.09. Authority of Certain Corporations to Borrow Money.

#### PART THREE

Article
1302-3.01. Veteran Corporations; Use of Name; Forfeiture of Charter.
1302-3.02. Educational Corporations.
1302-3.03. Cemeteries.
1302-3.04. Detective Agencies; Bond Required.
1302-3.05. Certain Railroads.

#### PART FOUR

1302-4.01. Conditions of Purchase of Lands.
1302-4.02. Sale of Surplus Lands.
1302-4.03. Liquidation of Land Acquired in Payment of Debts.
1302-4.04. Corporations Prohibited.
1302-4.05. Town Lot Corporations.
1302-4.06. Escheat Proceedings.
1302-4.07. Disposition of Penalties.

#### PART FIVE

1302-5.01. Authority of Attorney General to Examine Books, Records, etc.
1302-5.02. Request to Examine.
1302-5.03. Authority to Examine Management, etc., of Corporation.
1302-5.04. Authority to Disclose.
1302-5.05. Penalty.
1302-5.06. Provisions Cumulative.
1302-5.07. Lien for Law Violations.
1302-5.08. Date of Lien and Notice.
1302-5.09. Abatement of Suit.
1302-5.10. Receiver.
1302-5.11. Rights of State.
1302-5.12. Foreclosure.
1302-5.13. Law Cumulative.
1302-5.14. Authority of Attorney General to Proceed Against an Insolvent Corporation.
1302-5.15. Liquidation.
1302-5.16. May Dismiss Action.
1302-5.17. Permission to Sue.
1302-5.18. Examination and Notice.
1302-5.19. Provisions Cumulative.

#### PART SIX

1302-6.01 to 1302-6.24. Repealed.
1302-6.25. Prior Certificates not Affected.
1302-6.26. Partial Invalidity.

*The Texas Miscellaneous Corporation Laws Act, incorporated herein as Articles 1302-1.01 to 1302-6.26, was enacted by Acts 1961, 57th Leg., ch. 205, p. 408, § 1, effective August 28, 1961.*

*Various existing articles applicable to corporations were repealed by Acts 1955, 54th Leg., ch. 64, art. 9.16 (Business Corporation Act), Acts 1961, 57th Leg., p. 408, c. 205, § 2 (Miscellaneous Corporation Laws Act), and Acts 1961, 57th Leg., p. 458, ch. 229, § 1. Both of the latter*

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

TABLE 1—MISCELLANEOUS LAWS

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

Repealed Article	Misc.Corp. Article
1302	1302-3.04, 1302-3.05
1304a	1302-3.01
1306	1302-2.01
1307	1302-2.02
1317	1302-2.03
1321a	1302-2.04
1334b	1302-2.05
1348	1302-2.06
1358-1	1302-6.02
1358-2	1302-6.03
1358-3	1302-6.04
1358-4	1302-6.05
1358-5	1302-6.06
1358-6	1302-6.07
1358-7	1302-6.08
1358-8	1302-6.09
1358-9	1302-6.10
1358-10	1302-6.11
1358-11	1302-6.12
1358-12	1302-6.13
1358-13	1302-6.14
1358-14	1302-6.15
1358-15	1302-6.16
1358-16	1302-6.17
1358-17	1302-6.18
1358-18	1302-6.19
1358-19	1302-6.20
1358-20	1302-6.21
1358-21	1302-6.22
1358-22	1302-6.23
1358-23	1302-6.24
1358-24	1302-6.25
1358-25	1302-6.01
1358-26	1302-6.26
1359	1302-4.01
1360	1302-4.02
1361	1302-4.03
1362	1302-4.04
1363	1302-4.05
1364	1302-4.06
1365	1302-4.07
1366	1302-5.01
1367	1302-5.02
1368	1302-5.03
1369	1302-5.04
1370	1302-5.05
1371	1302-5.06
1372	1302-5.07
1373	1302-5.08
1374	1302-5.09
1375	1302-5.10
1376	1302-5.11
1377	1302-5.12

Repealed Article	Misc.Corp. Article
1378	1302-5.13
1380	1302-5.14
1381	1302-5.15
1382	1302-5.16
1383	
1384	1302-5.17
1385	1302-5.18
1386	1302-5.19
1389	1302-2.07
1410	1302-3.02A
1411	1302-3.02B
1531	1302-2.08

TABLE 2—NON-PROFIT CORPORATIONS

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

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

TABLE 3—BUSINESS CORPORATIONS

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

Repealed Article	Bus.Corp. Article
1302	2.01 to 3.02
1302a	2.01
1302b	2.01
1302c	2.01
1302d	2.01
1302d-1	2.01

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

PART ONE

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

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

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

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

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

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

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

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

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

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

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

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

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

"Article 1306;

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

"Article 1317;

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

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

"Article 1410;

"Article 1411;

"Article 1359;

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

"Articles 1361; 1362; 1363; 1364; 1365; 1366; 1367; 1368; 1369; 1370; 1371; 1372; 1373; 1374; 1375; 1376; 1377; 1378; 1380; 1381; 1382; 1383; 1384; 1385; 1386;"

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

"Article 1531."

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

#### Art. 1302-1.02. **Synonymous Terms**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### PART TWO

#### Art. 1302-2.01. **Married Women**

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

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

#### Art. 1302-2.02. **Notice by Firm**

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

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

**Art. 1302-2.03. Ostensible Corporation; Debt**

A. No person who assumes an obligation to an ostensible corporation as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for that purpose.

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

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

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

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

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

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

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

**Art. 1302-2.06. Consideration for Indebtedness; Guaranties**

A. No corporation, domestic or foreign, doing business in this state shall create any indebtedness

whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation, subject to the provisions of Section B below. In the absence of fraud in the transaction, the judgment of the Board of Directors or the shareholders, as the case may be, as to the value of the consideration received for any such indebtedness shall be conclusive.

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

Nothing in this Section B is intended or shall be construed to limit or deny to any corporation, domestic or foreign, the right or power to do or perform any act which it is or may be empowered or authorized to do or perform under any other laws of the State of Texas now in force or hereafter enacted. Provided, however, this Section B shall not apply to nor enlarge the powers of any corporation, domestic, foreign, or alien, that does business pursuant to any provision of the Insurance Code of Texas, whether licensed in Texas or not, nor shall it allow or permit

any corporation, not licensed under the Insurance Code of Texas, to engage in any character, type, class, or kind of fidelity, surety, or guaranty business or transaction subject to regulation under the Insurance Code.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1; Acts 1963, 58th Leg., p. 1184, ch. 469, §§ 2, 3, eff. Aug. 23, 1963; Acts 1973, 63rd Leg., p. 676, ch. 285, § 1, eff. Aug. 27, 1973.]

#### Art. 1302-2.07. Limited Survival after Dissolution

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

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

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

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

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

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

B. During such period, the board of directors serving at the time of dissolution or the majority of them then living, however reduced in number, or their successors selected by them, shall continue to manage the affairs of the corporation for the limited purpose or purposes specified in this Article, and shall have whatever powers may be necessary to accomplish such purposes, including the power to prosecute, pay, compromise, defend, and satisfy any action, claim, demand, or judgment by or against the corporation, and to administer, sell, and distribute in final liquidation any property or assets still remaining. In the exercise of such powers, the directors and officers shall be trustees for the benefit of

creditors, shareholders, members, or other distributees of the corporation and shall be jointly and severally liable to such persons to the extent of the corporate property and assets that shall have come into their hands.

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

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

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

#### Art. 1302-2.08. Affidavit of a Foreign Corporation

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

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

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

Notwithstanding any other provision of law, corporations, domestic or foreign, may agree to and stipulate for any rate of interest as such corporation

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

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

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

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

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

### PART THREE

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

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

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

#### Art. 1302-3.02. Educational Corporations

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

B. The directors or trustees named in the charter of any college, academy, university, or other corporation to promote education, and their successors, may make all necessary bylaws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and per-

form all necessary acts to carry into effect the objects of the corporation.

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

#### Art. 1302-3.03. Cemeteries

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

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

#### Art. 1302-3.04. Detective Agencies; Bond Required

A. Before a certificate of incorporation or a certificate of authority to transact business in this State shall be issued to any corporation organized or sought to be organized for any purpose or purposes which include the operation of a detective agency, its incorporators or its officer, as the case may be, shall have executed a good and sufficient surety bond or insurance policy (in the event of a bond to be signed by some good solvent bonding company authorized to do business in this State, and in the event of an insurance policy to be executed by some good solvent insurance company authorized to do business in this State) and deliver the same to the Secretary of State. Said surety bond or insurance policy shall be in the sum of Ten Thousand Dollars (\$10,000) and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against said detective agency by reason of the wrongful or illegal acts of its servants, officers, agents, or employees, committed by them in the course of their employment. Said surety bond or insurance policy shall further be conditioned that such person so injured shall have the right to sue directly upon such surety bond or insurance policy in their own name, and the same shall be subject to successive suits for recovery until a complete exhaustion of the face amount thereof. Each such detective agency shall on or before the date of the expiration of the terms of any surety bond or insurance policy so filed by such agency file a renewal thereof, or a new surety bond or insurance policy containing the same terms or obligations of the preceding surety bond or policy, and shall each year thereafter, on or before the expiration date of the existing surety bond or insurance policy, file such renewal surety bond or insurance policy so as to provide continuous security to persons so injured, and in the event any such detective agency fails to execute any surety bond or insurance policy in the first instance, or to execute any renewal surety bond or insurance policy, or to file the same with the Secretary of State as provided herein, it shall constitute grounds for the forfeiture of the articles of incorporation of a domestic corporation and of the certificate of authority of a foreign corporation in a suit to be instituted at the instance of the Attorney

General. Nothing herein shall be construed to authorize the agents, servants, officers, or employees of such corporation to have the power of peace officers in this State unless such powers be conferred thereon under the provisions of some other law of this State.

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

#### Art. 1302-3.05. Certain Railroads

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

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

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

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

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

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

### PART FOUR

#### Art. 1302-4.01. Conditions of Purchase of Lands

A. No private corporation shall be permitted to purchase any lands under any provision of this Part, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business to secure the payment of debt.

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

#### Art. 1302-4.02. Sale of Surplus Lands

A. All private corporations authorized by the laws of Texas to do business in this State, whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase, or otherwise, more land than is necessary to enable them to carry on their business, shall within fifteen (15) years from the date said land may be acquired, in good faith, sell and convey in fee simple all lands so acquired which are not necessary for the transaction of the business. Notwithstanding any other provisions of this Part, it shall be lawful for such surplus lands to be conveyed and acquired by another corporation which may have among its purposes the acquisition, development and sale of such surplus lands, provided, however, that any such acquiring corporation shall in good faith sell and convey any such land on or before the expiration of the aforesaid fifteen-year period just as the conveying corporation would have had to do if it had not conveyed

such land to such acquiring corporation, and if such acquiring corporation does not so convey such land on or before such time, it shall thereafter hold the same subject to the same forfeiture and escheat provisions provided for in this Part as though such lands were still held by the conveying corporation.

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

#### Art. 1302-4.03. Liquidation of Land Acquired in Payment of Debts

A. Any lands acquired by corporations in payment of debts due such corporations shall be sold and conveyed as provided in this Part within fifteen (15) years from the date of the acquisition of such land.

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

#### Art. 1302-4.04. Corporations Prohibited

A. No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease or otherwise, shall hereafter be permitted to acquire any land within this State by purchase, lease, or otherwise.

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

#### Art. 1302-4.05. Town Lot Corporations

A. Nothing in this Part shall be construed to prohibit the lease, purchase, sale or subdivision of real property within incorporated towns, cities, or villages, and their suburbs not extending more than two (2) miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell and subdivide real estate, within towns, cities and villages, and their suburbs, whether the suburbs be stated to be measured from the limits merely, or the corporate limits, of such towns, cities and villages. All such corporations now existing, or which may hereafter be created shall be authorized to lease, sell or subdivide real property in any unincorporated city, town, or village, or the suburbs thereof, within this State, not exceeding two (2) miles in any direction from the courthouse, or depot nearest the center of such city, town, or village, or from the center thereof, if there be no courthouse or depot.

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

#### Art. 1302-4.06. Escheat Proceedings

A. All corporations holding lands contrary to the provisions of this Part shall hold the same subject to forfeiture and escheat proceedings. The Attorney General, or any district or county attorney, when either of them has reason to believe that any corporation is holding lands in violation of this Part, shall institute suit in the name of the State of Texas, in Travis County, or in any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided for the escheat of estates of deceased persons without devise thereof and having no heirs.

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

**Art. 1302-4.07. Disposition of Penalties**

A. If it be determined upon the trial of said suit that lands are held contrary to this Part, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution, the proceeds of such sale to be first applied to the payment of costs of such suit, and the balance to be paid into the State Treasury subject to be paid to the stockholders or person entitled to receive the same as owners, upon proper proof made within twelve (12) months from date of sale. If the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat to the State and be applied to the Available School Fund. The court trying said cause shall allow the attorney representing the State a reasonable fee, to be taxed as cost in the suit. In no case shall the State be liable for costs or fees unless it is successful in said suit. [Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

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

A. Every corporation, domestic or foreign, doing business in Texas, shall permit the Attorney General or any of his authorized assistants or representatives, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and bylaws, and other records of said corporation as he may deem necessary.

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

**Art. 1302-5.02. Request to Examine**

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

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

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

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

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

**Art. 1302-5.04. Authority to Disclose**

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

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

**Art. 1302-5.05. Penalty**

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

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

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

**Art. 1302-5.06. Provisions Cumulative**

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

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

**Art. 1302-5.07. Lien for Law Violations**

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

violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection.

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

**Art. 1302-5.08. Date of Lien and Notice**

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

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

**Art. 1302-5.09. Abatement of Suit**

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

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

**Art. 1302-5.10. Receiver**

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

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

**Art. 1302-5.11. Rights of State**

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

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

**Art. 1302-5.12. Foreclosure**

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

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

**Art. 1302-5.13. Law Cumulative**

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

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

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

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

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

**Art. 1302-5.15. Liquidation**

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

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

**Art. 1302-5.16. May Dismiss Action**

A. If any suit authorized by Articles 5.14 and 5.15 of this Part has been instituted, the same shall

be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency.

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

**Art. 1302-5.17. Permission to Sue**

A. Before such petition is filed by the Attorney General, or under his authority, as provided in Articles 5.14 and 5.15 of this Part, leave therefor shall first be granted by the judge of the court in which the proceeding is to be instituted.

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

**Art. 1302-5.18. Examination and Notice**

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

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

**Art. 1302-5.19. Provisions Cumulative**

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

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

**PART SIX**

**Arts. 1302-6.01 to 1302-6.24. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed article 1302-6.01 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 8.101 et seq.

**Art. 1302-6.25. Prior Certificates not Affected**

A. The provisions of this Part apply only to certificates issued after the taking effect of Acts, 1943, Forty-eighth Legislature, page 722, Chapter 397.

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

**Art. 1302-6.26. Partial Invalidity**

A. If any part, section, subsection, paragraph, sentence, clause, phrase, or word in this Part shall be

held by any court to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Part, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

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

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

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

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

**CHAPTER TWO. CREATION OF CORPORATIONS [Repealed]**

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

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

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

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

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

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

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

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

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1349. Acts Prohibited.

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1351. Penalty.

1352. Repealed.

1353. Watering Stock.

1354. Suit.

1355. Avoidance of Suit.

1356. Remedies Cumulative.

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1358-1 to 1358-26. Repealed.

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

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

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

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

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

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

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

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

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

**Art. 1349. Acts Prohibited**

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

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

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

**Art. 1351. Penalty**

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

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

sons directly or indirectly connected with such violations.

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

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

**Art. 1353. Watering Stock**

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

[Acts 1925, S.B. 84.]

**Art. 1354. Suit**

When any corporation has issued and has outstanding any stocks or bonds given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, the Attorney General when convinced that the facts exist which authorize the action, shall institute quo warranto or other appropriate judicial proceedings in Travis County or in any other county of this State where such corporation may be sued, to have such stocks or bonds issued in violation of the Constitution or laws of Texas, cancelled, expunged, and held for naught.

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

[Acts 1925, S.B. 84.]

**Art. 1355. Avoidance of Suit**

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

[Acts 1925, S.B. 84.]

**Art. 1356. Remedies Cumulative**

The rights and remedies given by the two preceding articles are cumulative, and shall not affect,

change or repeal any other remedies or rights now existing in this State for the enforcement, payment, or collection of fines, forfeitures and penalties.  
[Acts 1925, S.B. 84.]

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

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

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

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

ment of a court of competent jurisdiction that he is the unregistered owner of such shares or interest entitled to receive such distribution thereon.

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

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

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

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

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

#### CHAPTER FOUR. LANDS [Repealed]

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

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

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

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

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

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

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

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- 1396-9.10. Action Without a Meeting by Members, Directors or Committees.  
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## 2. RELIGIOUS AND CHARITABLE

- 1396 to 1398. Repealed.  
 1399. Lodges.  
 1400. Lodges: Charter.  
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- 1410 to 1415a. Repealed.

## 1. TEXAS NON-PROFIT CORPORATION ACT

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

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

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

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

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

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

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

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

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

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

**Art. 1396-1.02. Definitions**

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

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the

provisions of this Act, except a foreign corporation.

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

(3) "Non-Profit Corporation" is the equivalent of "not for profit corporation" and means a corporation no part of the income of which is distributable to its members, directors, or officers.

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

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

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

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

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

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

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

(11) "Treasurer" means that officer designated as "treasurer" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of a treasurer, irre-

spective of the name by which he, or they, may be designated.

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

(13) "Verified" means subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

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

#### Art. 1396-2.01. Purposes

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

(1) Charitable corporations may be formed for the purpose of operating a Dental Health Service Corporation which service corporation will manage and coordinate the relationship between the contracting dentist, who will perform the dental services, and the patient who will receive such services where such patient is a member of a group which has contracted with the Dental Health Service Corporation to provide dental care to members of that group. An application for a charter under this Section shall have attached as exhibits (1) an affidavit by the applicants that not less than thirty percent (30%) of the dentists legally engaged in the

practice of dentistry in this state together with their names and addresses have signed contracts to perform the required dental services for a period of not less than one (1) year, after incorporation, and

(2) a certification by the Texas State Board of Dental Examiners that the applicant incorporators are reputable citizens of the State of Texas and are of good moral character and that the corporation sought to be formed will be in the best interest of the public health. A corporation formed hereunder shall have not less than twelve (12) directors, nine (9) of whom shall be dentists licensed by the Texas State Board of Dental Examiners to practice dentistry in this state and be actively engaged in the practice of dentistry in this state. A corporation formed hereunder shall maintain not less than thirty percent (30%) of the number of dentists actually engaged in the practice of dentistry in this state as participating or contracting dentists, and shall file with the Texas State Board of Dental Examiners each September the names and addresses of all contracting or participating dentists.

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

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

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

(3) If any one or more of its purposes for the conduct of its affairs in this State is to organize Group Hospital Service, Rural Credit Unions, Agricultural and Livestock Pools, Mutual Loan Corporations, Co-operative Credit Associations, Farmers' Co-operative Societies, Co-operative Marketing Act Corporations, Rural Electric Co-operative Corporations, Telephone Co-operative Corporations, or fraternal organizations operating under the lodge system and heretofore or hereafter incorporated under Articles 1399 through 1407, both inclusive, of Revised Civil Statutes of Texas, 1925.

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

(5) If any one or more of its purposes for the conduct of its affairs in this State is to engage in water or sewer service and it has heretofore or is hereafter incorporated under the Acts of

1933, Forty-third Legislature, First Called Session, Chapter 76, as amended, Acts of 1941, Forty-seventh Legislature, page 666, Chapter 407, being presently identified as Article 1434(a), Revised Civil Statutes of Texas, 1925.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.01; Acts 1961, 57th Leg., p. 959, ch. 418, § 1.]

#### Art. 1396-2.02. General Powers

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

(1) To have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation.

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

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

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

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

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

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

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

(11) To elect or appoint officers and agents of the corporation for such period of time as the

corporation may determine and define their duties and fix their compensation.

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

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

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

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

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

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

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or by-laws or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this Article.

C. Nothing in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Chapter 4 of Title 32 of Revised Civil Statutes of Texas, 1925, as now existing or hereafter amended. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.02.]

#### Art. 1396-2.03. Defense of Ultra Vires

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

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

corporation, as such limitations are expressed in the articles of incorporation, but that such act, conveyance or transfer was, or is, beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or inconsistent with any such expressed limitations of authority, may be asserted:

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

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority.

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

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

#### Art. 1396-2.04. Corporate Name

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

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

(2) It shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, existing under the laws of this State, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided by the Texas Business Corporation Act,<sup>1</sup> or the name of a corporation which has in effect a registration of its corpo-

rate name as provided in the Texas Business Corporation Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar, or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State.

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

<sup>1</sup> Business Corporation Act, art. 1.01 et seq.

#### Art. 1396-2.05. Registered Office and Registered Agent

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

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

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

B. On or before the 15th day of November, 1961, each not for profit corporation organized under the laws of this State prior to the effective date of this Act shall designate its registered office and appoint its registered agent by filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The street address of its registered office.

(3) The name of its registered agent.

(4) The street address of its registered agent.

(5) That the street address of its registered office and the street address of its registered agent are the same.

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

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

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

(2) File one of such duplicate originals in his office.

(3) Deliver the other duplicate original to the corporation or its representative.

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.05.]

<sup>1</sup> Article 1396-2.14C.

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

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

- (1) The name of the corporation.
- (2) The post-office address of its then registered office.
- (3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.
- (4) The name of its then registered agent.
- (5) If its registered agent is to be changed, the name of its successor registered agent.
- (6) That the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.
- (7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14 C of this Act,<sup>1</sup> by the members.

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

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

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

D. Any registered agent of a corporation may resign

- (1) by giving written notice to the corporation at its last known address
- (2) and by giving written notice, in triplicate, to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has

been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

- (1) Endorse on each of such originals the word "filed" and the month, day and year of the filing thereof.
- (2) File one of such originals in his office.
- (3) Return one original to such resigning registered agent.
- (4) Return one original to the corporation at the last known address of the corporation as shown in such written notice.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.06; Acts 1969, 61st Leg., p. 2477, ch. 834, §§ 1, 2, eff. June 18, 1969.]

<sup>1</sup> Article 1396-2.14C.

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

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

"Sec. 10. Severability. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provisions to other persons or circumstance shall not be affected thereby."

#### Art. 1396-2.07. Service of Process on Corporation

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

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

C. The Secretary of State shall keep a record of all processes, notices, and demands served upon him

under this Article, and shall record therein the time of such service and his action with reference thereto. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.07.]

#### Art. 1396-2.08. Members

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

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

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

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

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

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

#### Art. 1396-2.09. By-Laws

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

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

<sup>1</sup> Article 1396-2.14C.

#### Art. 1396-2.10. Meetings of Members

A. If a corporation has members:

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

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

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

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

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

#### Art. 1396-2.11. Notice of Members' Meetings

A. In the case of a corporation other than a church, written or printed notice stating the place, day or hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon paid.

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

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

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

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

#### Art. 1396-2.12. Quorum of Members

A. Unless otherwise provided in the articles of incorporation or in the by-laws, members holding

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

B. In the absence of an express provision to the contrary in the articles of incorporation or the by-laws, a church incorporated prior to the effective date of this Act shall be deemed to have provided in its articles of incorporation or its by-laws that members present at a meeting, notice for which shall have been duly given, shall constitute a quorum. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.12.]

#### Art. 1396-2.13. Voting of Members

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

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

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

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

#### Art. 1396-2.14. Board of Directors or Trustees

A. The affairs of a corporation shall be managed by a board of directors, or trustees. Directors or trustees need not be residents of this State or mem-

bers of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors or trustees.

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

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

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

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

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

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

"Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 1396-2.15. Number, Election, Classification, and Removal of Directors

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

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

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

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

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

#### Art. 1396-2.16. Vacancies

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

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

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

#### Art. 1396-2.17. Quorum and Voting Directors

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

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

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

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

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

D. A director may vote in person or (if the articles of incorporation or the by-laws so provide) by

proxy executed in writing by the director. No proxy shall be valid after three months from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

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

#### Art. 1396-2.18. Committees

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

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

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

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

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

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

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

**Art. 1396-2.20. Officers**

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

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

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

D. In the case of a corporation which is a church, it shall not be necessary that there be officers as provided herein, but such duties and responsibilities may be vested in the board of trustees or other designated body in any manner provided for in the articles of incorporation or the by-laws.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.20.]

<sup>1</sup> Article 1396-2.14C.

**Art. 1396-2.21. Removal of Officers**

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

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

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

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

B. If the corporation has not fully indemnified him, the court in the proceeding in which any claim

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

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

**Art. 1396-2.23. Books and Records**

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

B. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.23.]

**Art. 1396-2.24. Dividends Prohibited**

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

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

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

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

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

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

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

A. In addition to any other liabilities imposed by law upon directors of a corporation, the directors who vote for or assent to any distribution of assets

other than in payment of its debts, when the corporation is insolvent or when such distribution would render the corporation insolvent, or during the liquidation of the corporation without the payment and discharge of or making adequate provisions for all known debts, obligations and liabilities of the corporation, shall be jointly and severally liable to the corporation for the value of such assets which are thus distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action was taken on such corporate matter shall be presumed to have assented to such action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of the action.

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

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

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

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

#### Art. 1396-2.27. Charitable Corporations

A. Notwithstanding any provision in this Act or in the articles of incorporation to the contrary (except as provided in Section B), the articles of incorporation of each corporation which is a private foundation described in Section 509 of the Internal Revenue Code of 1954<sup>1</sup> shall be deemed to contain the following provisions: "The corporation shall make distributions at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954;<sup>2</sup> the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code;<sup>3</sup> the

corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code;<sup>4</sup> the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code;<sup>5</sup> and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code."<sup>6</sup> With respect to any such corporation organized prior to January 1, 1970, this Section A shall apply only for its taxable years beginning on or after January 1, 1972.

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

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

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

<sup>1</sup> 26 U.S.C.A. § 509.

<sup>2</sup> 26 U.S.C.A. § 4942.

<sup>3</sup> 26 U.S.C.A. § 4941.

<sup>4</sup> 26 U.S.C.A. § 4943.

<sup>5</sup> 26 U.S.C.A. § 4944.

<sup>6</sup> 26 U.S.C.A. § 4945.

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

#### Art. 1396-3.01. Incorporators

A. Three (3) or more natural persons, two (2) of whom must be citizens of the State of Texas, of the age of twenty-one (21) years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Secretary of State articles of incorporation for such corporation.

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.01.]

#### Art. 1396-3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) A statement that the corporation is a non-profit corporation.
- (3) The period of duration, which may be perpetual.
- (4) The purpose or purposes for which the corporation is organized.
- (5) If the corporation is to have no members, a statement to that effect.
- (6) If the corporation is a church and the management of its affairs is to be vested in its

members pursuant to Article 2.14 C of this Act,<sup>1</sup> a statement to that effect.

(7) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the by-laws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

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

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

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

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

#### Art. 1396-3.03. Filing of Articles of Incorporation

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

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.03.]

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

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

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

#### Art. 1396-3.05. Organization Meeting

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

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

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

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

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

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

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

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

**Art. 1396-4.03. Articles of Amendment**

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

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorpora-

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

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.03.]

**Art. 1396-4.04. Filing of Articles of Amendment**

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

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.04.]

**Art. 1396-4.05. Effect of Certificate of Amendment**

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

B. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than

members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

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

#### Art. 1396-4.06. Restated Articles of Incorporation

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

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

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

B. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted; and provided further that, if the management of a church is vested in its members pursuant to Article 2.14 C of this Act<sup>1</sup> and if, under that Article, original articles of incorporation are not required to contain a statement to that effect, any restatement of the articles of incorporation shall contain a statement to that effect.

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

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

(2) Contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to

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

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

D. Such restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. Duplicate originals of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

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

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.06.]

<sup>1</sup> Article 1396-2.14C.

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

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

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

- (1) The name of the corporation proposing to merge.
- (2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
- (3) The terms and conditions of the proposed merger.
- (4) A statement of any changes in the articles of incorporation of the surviving corporation to be affected by such merger.
- (5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

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

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

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

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

- (1) The names of the corporations proposing to consolidate.
- (2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.
- (3) The terms and conditions of the proposed consolidation.
- (4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.
- (5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

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

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

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

- (1) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporations shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at the meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed

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

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

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

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

- (1) The plan of merger or the plan of consolidation.
- (2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of

incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

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

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

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

(2) File one of such duplicate originals in his office.

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.04.]

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

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

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

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

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

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

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

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

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

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

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

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

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

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

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

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of

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

(2) Each foreign corporation, if it is to transact business in this State, shall file with the Secretary of State of this State within thirty (30) days after the merger or consolidation, as the case may be, shall become effective, a copy of the plan, articles, or other document filed in the state of its incorporation for the purpose of effecting the merger or consolidation, certified by the public officer having custody of the original.

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

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

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

(4) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation,

and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

C. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is a domestic corporation. If the surviving or new corporation is a foreign corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.07.]

<sup>1</sup> Article 1396-5.03.

#### Art. 1396-5.08. Conveyance by Corporation

A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or vice-president or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or members. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice-president of the corporation, shall constitute prima facie evidence that such resolution of the board of directors or members was duly adopted. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.08.]

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

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

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, or exchange, and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, or exchange, and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the

corporation therefor. Such authorization shall require at least two-thirds ( $\frac{2}{3}$ ) of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws in which event such authorization shall also require at least two-thirds ( $\frac{2}{3}$ ) of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast. After such authorization by vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, or exchange of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

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

(3) Where the management of the affairs of a corporation vested in its members pursuant to Article 2.14 C of this Act,<sup>1</sup> a resolution authorizing such sale, lease, or exchange shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation shall be given to the members, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting, the members may authorize such sale, lease, or exchange, and may fix, or authorize one or more of its members to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes of the members present at such meeting.

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

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

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

<sup>1</sup> Article 1396-2.14C.

#### Art. 1396-6.01. Voluntary Dissolution

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

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

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

#### Art. 1396-6.02. Application and Distribution of Assets

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

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

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

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

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

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

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

#### Art. 1396-6.03. Plan of Distribution

A. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act,

may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

#### Art. 1396-6.04. Revocation of Voluntary Dissolution Proceedings

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

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that

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

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

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

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

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

<sup>1</sup> Article 1396-2.14C.

#### Art. 1396-6.05. Article of Dissolution

A. If voluntary dissolution proceedings<sup>1</sup> have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, or, in case its property and assets are not

sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

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

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

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

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

that distribution has been effected in accordance with such plan.

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.05.]

<sup>1</sup> So in enrolled bill.

#### Art. 1396-6.06. Filing of Articles of Dissolution

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

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

B. The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.06.]

#### Art. 1396-7.01. Involuntary Dissolution; Reinstatement

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

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

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

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

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

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is estab-

lished that it is in default in any of the following particulars:

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

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

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

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

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

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated

contemporaneously amends the articles of incorporation to change its name.

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

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

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

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

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

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

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

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

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

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General may then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

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

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

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

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

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

### Art. 1396-7.03. Venue and Process

A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. Citation shall issue and be served as provided by law. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two consecutive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.03.]

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

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

are determined by the court to be inadequate and only in the following instances:

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

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

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

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.04.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

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

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

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

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

F. Notwithstanding any provision of this Article or in this Act to the contrary, the district court for the county in which the registered office of any foreign corporation doing business in this State is located shall have jurisdiction to appoint an ancillary receiver for the assets and business of such corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. Moreover, such district court, whenever

circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this State, and the business of a foreign corporation doing business in this State, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this State, and its business, even though no receiver has been appointed elsewhere; such receivership shall be converted into an ancillary receivership when deemed appropriate by such district court in the light of orders entered by a court of competent jurisdiction in some other state, providing for a receivership of all assets and business of such corporation.

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

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

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

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

**Art. 1396-7.09. Decree of Involuntary Dissolution**

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

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

**Art. 1396-7.10. Filing of Decree of Dissolution**

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

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

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

A. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or member or other person who is unknown or cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets shall be reduced to cash and deposited with the State Treasurer, together with a statement

giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the State Treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The State Treasurer shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

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

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

#### Art. 1396-7.12. Survival of Remedy After Dissolution

A. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three (3) years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three (3) years so as to extend its period of duration.

Provided, however, any non-profit cemetery association whose charter expired prior to 1955 shall

have until January 1, 1968 to amend its articles of incorporation so as to extend its period of duration. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.12; Acts 1967, 60th Leg., p. 1824, ch. 704, § 1, eff. Aug. 28, 1967.]

#### Art. 1396-8.01. Admission of Foreign Corporations

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

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

- (1) Maintaining or defending any action or suit or any administration or arbitration proceedings, or affecting the settlement thereof or the settlement of claims or disputes to which it is a party.
- (2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Voting the stock of any corporation which it has lawfully acquired.
- (5) Effecting sales through independent contractors.
- (6) Creating evidence of debt, mortgages, or liens on real or personal property.
- (7) Securing or collecting debts due to it or enforcing any rights in property securing the same.
- (8) Conducting any affairs in interstate commerce.
- (9) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.
- (10) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this State, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by a person, corporation or association, non-resident of this State, if the exercise of such powers in such case

will not involve activities which would be deemed to constitute the transacting of business in this State in the case of a foreign corporation acting in its own right.

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

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

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

#### Art. 1396-8.02. Powers of Foreign Corporations

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

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

#### Art. 1396-8.03. Corporate Name of Foreign Corporation

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

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

(2) Is the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.03.]

#### Art. 1396-8.04. Application for Certificate of Authority

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

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

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

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

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

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

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

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

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.04.]

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

A. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or county under the laws of which it is incorporated. If the Secretary of State finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

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

(2) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.05.]

#### Art. 1396-8.06. Effect of Certificate of Authority

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

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

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

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

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

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

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

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

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

(1) The name of the corporation.  
 (2) The post-office address of its then registered office.

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

(4) The name of its then registered agent.

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

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

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is

vested in its members pursuant to Article 2.14 C of this Act, by the members.

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

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

(2) File one of such duplicate originals in his office.

(3) Return the other of such duplicate originals to the corporation or its representative.

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

D. Any registered agent of a corporation may resign

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

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

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

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

(2) File one of such originals in his office.

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.08; Acts 1969, 61st Leg., p. 2477, ch. 834, §§ 5, 6, eff. June 18, 1969.]

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

A. The president and all vice-presidents of a foreign corporation authorized to conduct affairs in

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

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

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

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

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

#### **Art. 1396-8.10. Amendment to Articles of Incorporation of Foreign Corporation**

A. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this State are amended such foreign corporation shall, within thirty (30) days after such amendment becomes effective, file in the office of the Secretary of State a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this State, nor authorize such corporation to conduct affairs in this State under any other name than the name set forth in its certificate of authority.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.10.]

#### **Art. 1396-8.11. Merger of Foreign Corporation Authorized to Conduct Affairs in this State**

A. Whenever a foreign corporation authorized to conduct affairs in this State shall be a party to a

statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty (30) days after such merger becomes effective, file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this State unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to pursue in this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.11.]

#### **Art. 1396-8.12. Amended Certificate of Authority**

A. A foreign corporation authorized to conduct affairs in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Secretary of State.

B. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.12.]

#### **Art. 1396-8.13. Withdrawal of Foreign Corporation**

A. A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs in this State.

(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(6) A statement that all sums due, or accrued, to this State have been paid, or that adequate provision has been made for the payment thereof.

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this State, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

B. The application for withdrawal shall be made on forms promulgated by the Secretary of State and shall be executed by any authorized officer of the corporation and verified by such officer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed and verified on behalf of the corporation by such receiver or trustee. The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.13.]

#### Art. 1396-8.14. Filing of Application for Withdrawal

A. Duplicate originals of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

B. The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.14.]

#### Art. 1396-8.15. Revocation of Certificate of Authority

A. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by a decree of the district court for the county in which the registered office of the corporation in this state is situated or of any district court

in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to conduct affairs beyond the scope of the purpose or purposes expressed in its certificate of authority to conduct affairs in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law.

B. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

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

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

(3) The corporation has failed to file in the office of the Secretary of State any amendment to its articles of incorporation or any articles of merger or consolidation within the time prescribed by this Act; or

(4) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state.

C. No foreign corporation shall have its certificate of authority to conduct affairs in this state revoked under Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

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

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

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

When the application for reinstatement is approved and filed by the Secretary of State, the corporate authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between revocation and reinstatement.

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to conduct affairs in this state in a district court of the county in which

the registered office of the foreign corporation in this state is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

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

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

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

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.15; Acts 1965, 59th Leg., p. 533, ch. 276, §§ 4, 5, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, § 7, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 990, ch. 399, § 2(N), eff. Jan. 1, 1974.]

#### Art. 1396-8.16. Filing of Decree of Revocation

A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to conduct affairs in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.16.]

#### Art. 1396-8.17. Conducting Affairs without Certificate of Authority

A. No foreign corporation which is conducting affairs in this State without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this State, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check or bill of exchange, or as the bona-fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.17.]

**Art. 1396-9.01. Report of Domestic and Foreign Corporations**

A. The Secretary of State is authorized to require each domestic corporation and each foreign corporation authorized to conduct affairs in this State to file, not more often than once every four (4) years for any corporation, a report setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

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

B. Such report shall be made on forms promulgated by the Secretary of State, and the information contained shall be given as of the date of the execution of the report. It shall be executed by any authorized officer of the corporation and verified by such officer; or, if the corporation is in the hands of a receiver or trustee, it shall be executed and verified on behalf of the corporation by such receiver or trustee. The verification shall include a statement that the officer executing the report is duly authorized to do so on behalf of the corporation.

C. Such report shall be delivered to the Secretary of State within thirty (30) days of the mailing of notice by the Secretary of State to the corporation that such report is due. Such notice may be either written or printed and shall be addressed to such corporation and mailed to the address named in its articles of incorporation as its principal place of business, or to its registered agent, or to the last address of the corporation as it appears on record in the office of the Secretary of State, or to any other known place of business of such corporation.

D. Along with the notice that such report is due, the Secretary of State shall mail to the corporation two (2) copies of a report form which shall be prepared and filed as herein provided.

E. One (1) copy of such report shall be delivered to the Secretary of State. If the Secretary of State finds that such report conforms to the provisions of this Act, he shall:

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

(2) Notify the corporation of the filing of such report.

F. Within two (2) years after September 1, 1961, the Secretary of State shall mail such notice to each non-profit corporation organized under the laws of this State prior to the effective date of this Act and subject to the provisions of this Act, and such report shall thereafter be filed as provided herein.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.01.]

**Art. 1396-9.02. Failure to File Reports; Forfeiture; Right of Corporation to Cure Default**

A. Any domestic or foreign corporation which shall fail to file the report provided for in Article 9.01 of this Act,<sup>1</sup> when the same shall become due, shall, for such default, forfeit its right to conduct affairs in this State.

B. Such forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words "right to conduct affairs forfeited," together with the date of such forfeiture. Notice of such forfeiture shall thereupon be mailed to the corporation to the address named in its articles of incorporation as its principal place of business, or to its registered agent, or to the last address of the corporation as it appears on record in the office of the Secretary of State; or to any other known place of business of such corporation. Until the right of such corporation to conduct affairs in this State shall be revived in accordance with Sections C and D of this Article, it shall not be permitted to maintain any action, suit or proceeding in any court of this State. Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this State, until the right of such corporation to conduct affairs in this State shall have been revived in accordance with Sections C and D of this Article. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the corporation as the holder in due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument negotiable by law. The forfeiture of the right to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this State.

C. Any corporation whose right to conduct affairs may have been forfeited as provided in this Act, shall be relieved from such forfeiture by filing the required report with the Secretary of State within 120 days of the date of mailing such notice of forfeiture, together with a late filing fee of One Dollar (\$1) for each month, or fractional part thereof, which shall have elapsed after such forfeiture of its right to conduct affairs; provided, that such amount shall in no case be less than Five Dollars (\$5) nor more than Twenty-five Dollars (\$25).

D. When such report shall be filed and the revival fee shall be paid to the Secretary of State, he shall revive the right of the corporation to conduct affairs in this State, cancelling the words "right to conduct affairs forfeited" upon his record, and endorsing thereon the word "Revived" and the date of such revival.

E. If any corporation whose right to conduct affairs within this State shall hereafter be forfeited under the provisions of this Act shall fail to file such report and pay to the Secretary of State the required revival fee within one hundred and twenty (120) days after the date of mailing of the notice of such forfeiture, such failure shall constitute sufficient ground for the involuntary dissolution of the corporation or the revocation of its certificate of authority, which dissolution or revocation shall be consummated without judicial ascertainment, by the Secretary of State entering upon the record of such corporation filed in his office, the word "Forfeited" giving the date thereof and citing this Act as authority therefor.

F. Any corporation which is involuntarily dissolved or whose certificate of authority is revoked without judicial ascertainment, as provided in Section E hereof, and which has paid all fees, taxes, penalties and interest due thereon which accrued before the dissolution or revocation plus an amount equal to the total taxes from the date of dissolution or revocation to the date of reinstatement which would have been payable had the corporation not been dissolved or its certificate revoked may be relieved from such dissolution or revocation by filing the required report with the Secretary of State together with a filing fee of Twenty-five (\$25.00) Dollars.

G. When such report shall be filed and the revival fee shall be paid to the Secretary of State, he shall reinstate the certificate of incorporation or charter or certificate of authority without judicial ascertainment, cancelling the word "Forfeited" upon his record, and endorsing thereon the words "Set Aside" and the date of such reinstatement; provided, if such dissolution or revocation is to be set aside, the corporation shall ascertain from the Secretary of State whether the name of the corporation is available; and if not available, amend its corporate name pursuant to the provisions of this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.02; Acts 1965, 59th Leg., p. 533, ch. 276, §§ 6 to 9, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, § 8, eff. June 18, 1969.]

<sup>1</sup> Article 1396-9.01.

#### Art. 1396-9.03. Fees for Filing Documents and Issuing Certificates

A. The Secretary of State shall charge and collect for:

- (1) Filing articles of incorporation and issuing a certificate of incorporation, Twenty-five Dollars (\$25); provided that the filing fee in the case of a church shall be Ten Dollars (\$10).
- (2) Filing articles of amendment and issuing a certificate of amendment, Twenty-five Dollars (\$25); provided that the filing fee in the case of a church shall be Ten Dollars (\$10).
- (3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, Fifty Dollars (\$50).

(4) Filing a statement of change of address of registered office or change of registered agent, or both, Five Dollars (\$5).

(5) Filing articles of dissolution, Five Dollars (\$5).

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, Twenty-five Dollars (\$25).

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, Twenty-five Dollars (\$25).

(8) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, Twenty-five Dollars (\$25).

(9) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, Fifty Dollars (\$50).

(10) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, Five Dollars (\$5).

(11) Filing any other statement or report of a domestic or foreign corporation, Five Dollars (\$5).

(12) Filing restatement of articles of incorporation, Fifty Dollars (\$50); provided that the filing fee in the case of a church shall be Twenty Dollars (\$20).

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.03; Acts 1961, 57th Leg., p. 450, ch. 223, § 1.]

#### Art. 1396-9.04. Powers of Secretary of State

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.04.]

#### Art. 1396-9.05. Appeals from Secretary of State

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to conduct affairs in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten (10) days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the

court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.05.]

**Art. 1396-9.06. Certificates and Certified Copies to be Received in Evidence**

A. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office, in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated and may be officially recorded. A certificate by the Secretary of State under the great seal of this State, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.06.]

**Art. 1396-9.07. Forms to be Promulgated by Secretary of State**

A. Forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State. The use of such forms, however, shall not be mandatory, except in instances in which the law may specifically so provide.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.07.]

**Art. 1396-9.08. Greater Voting Requirements**

A. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, then required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.08.]

**Art. 1396-9.09. Waiver of Notice**

A. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.09.]

**Art. 1396-9.10. Action Without a Meeting by Members, Directors or Committees**

A. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee, as the case may be.

B. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.10.]

**Art. 1396-10.01. Application to Foreign and Interstate Affairs**

A. The provisions of this Act shall apply to the conduct of affairs with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.01.]

**Art. 1396-10.02. Reservation of Power**

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.02.]

**Art. 1396-10.03. Effect of Invalidity of Part of This Act**

A. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection, section, or Article of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, or Article of this Act so adjudged to be invalid or unconstitutional.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.03.]

**Art. 1396-10.04. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporation**

A. Until September 1, 1961, this Act shall not apply to any domestic corporation duly chartered and existing on the effective date of this Act, or to any foreign corporation, unless such domestic corporation shall voluntarily elect to adopt the provisions of this Act and shall comply with the procedure prescribed by Section B of this Article, and unless such foreign corporation shall procure a certificate of authority pursuant to Part Eight of this Act.<sup>1</sup>

B. From and after the effective date of this Act and prior to September 1, 1961, any domestic corporation duly chartered and existing on the effective date of this Act may voluntarily elect to adopt the provisions of this Act and may become subject to its provisions by taking the following steps:

(1) A resolution reciting that the corporation voluntarily adopts this Act shall be adopted by the board of directors and/or the members in accordance with the procedure prescribed by this Act for the amendment of articles of incorporation of such corporation.

(2) Upon adoption of the required resolution or resolutions, an instrument shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which shall set forth:

- (a) The name of the corporation.
- (b) Each resolution adopted by the corporation.
- (c) The date of the adoption of each resolution.
- (d) The street address of its initial registered office and the name of its initial registered agent at such address.

(3) Duplicate originals of such document shall be delivered to the Secretary of State. If the Secretary of State finds that such document conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

- (a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.
- (b) File one of such duplicate originals in his office.
- (c) Deliver the other duplicate original to the corporation or its representative.

(4) Upon the filing of such document, all provisions of this Act shall thereafter apply to the corporation; provided, however, that such delivery to and filing by the Secretary of State need not precede action by the directors and/or the members of a corporation in connection with amendments to its articles of incorporation or its by-laws under this Act so long as (a) such amendments do not become effective until after the Secretary of State has filed the document whereby such corporation adopts this Act and (b) the procedures and requirements of this Act for the adoption of such amendments, including requirements as to notice, shall have been complied with and satisfied.

C. Except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations organized after the date on which this Act becomes effective and to all domestic

corporations electing to adopt this Act and manifesting their election in the manner provided in Section B of this Article, prior to September 1, 1961.

D. From and after September 1, 1961, this Act shall apply to all domestic corporations and to all foreign corporations conducting or seeking to conduct affairs within this State. Those domestic corporations existing at the time that this Act becomes effective which have not meanwhile adopted this Act by complying with Section B of this Article shall, on September 1, 1961, be deemed to have elected to adopt this Act by not voluntarily dissolving.

E. No foreign corporation shall conduct affairs in this State after September 1, 1961, unless and until it shall have procured a certificate of authority in accordance with the requirements of Part Eight of this Act. Such certificates may be applied for and issued at any time after the effective date of this Act and this Act shall thereafter apply to such corporation from the date of the issuance of its certificate of authority; provided, however, that if such corporation expressly so requests in its application, the effective date of its certificate may be delayed until September 1, 1961, even though issued prior to such date.

F. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern burial associations as defined in Article 14.37, Texas Insurance Code local mutual aid associations, statewide mutual assessment corporations, and county mutual insurance companies; provided however, (a) that any such mutual insurance associations or companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this Act some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State, such is to be vested in, required of, or performed by the Commissioner of Insurance in so far as such mutual insurance companies or associations are concerned.

G. This Act shall not apply to those corporations excepted under Article 2.01 B, Subsections (3), (4), and (5) of this Act;<sup>2</sup> provided however, that if any of said excepted domestic corporations were heretofore or are hereafter organized not for profit under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically applicable provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.04; Acts 1961, 57th Leg., p. 653, ch. 302, § 2.]

<sup>1</sup> Article 1396-8.01 et seq.

<sup>2</sup> Article 1396-2.01 B, subsecs. (3), (4), (5).

**Art. 1396-10.05. Extent to Which Existing Laws Shall Remain Applicable to Corporations**

A. Except as provided in the last preceding Article,<sup>1</sup> existing corporations shall continue to be governed by the laws heretofore applicable thereto, until September 1, 1961.

B. Except as provided in Article 10.06 of this Act,<sup>2</sup> any limitations, obligations, liabilities and powers applicable to a particular kind of corporation, for which special provision is made by the laws of this State, shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities and powers.

C. Provided that nothing in this Act shall in any wise affect or nullify the Anti-Trust laws of this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.05.]

<sup>1</sup> Article 1396-10.04.  
<sup>2</sup> Article 1396-10.06.

**Art. 1396-10.06. Repeal of Existing Laws; Extent and Effect Thereof**

A. Subject to the provisions of the last two (2) preceding Articles of this Act<sup>1</sup> and of Section B of Article 2.01 of this Act,<sup>2</sup> and excluding any existing general Act not inconsistent with any provisions of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to conduct affairs in this State under this Act, or to existing corporations which adopt this Act.

B. The repeal of a prior Act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act prior to the repeal thereof.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.06.]

<sup>1</sup> Articles 1396-10.04, 1396-10.05.  
<sup>2</sup> Article 1396-2.01.

**Art. 1396-11.01. Emergency Clause**

A. The fact that existing laws of the State of Texas have been amended from time to time over a period of some seventy (70) years and more without any adoption meanwhile of a complete Act relating to non-profit corporations generally, the provisions of which are consistent with one another; the fact that with so many amendments of the corporation laws applicable to non-profit corporations generally over so many years there have developed many uncertainties in the corporation laws of this State and with the result that there is now an imperative need for clarification of certain provisions of the existing laws; the fact that existing Texas laws are incomplete and that there are no existing Texas laws for many aspects of the non-profit corporation; all such facts create an emergency and public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended and said Rule is hereby suspended; and

require that this Act take effect and be in force from and after its passage, and it is so enacted.  
[Acts 1959, 56th Leg., p. 286, ch. 162, art. 11.01.]

**2. RELIGIOUS AND CHARITABLE**

**Arts. 1396 to 1398. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1**

**Art. 1399. Lodges**

The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title.

[Acts 1925, S.B. 84.]

**Art. 1400. Lodges: Charter**

The incorporation of any such grand lodge shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body.

[Acts 1925, S.B. 84.]

**Art. 1401. Lodges: Trustees**

Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts as are directed or provided by law in the case of other corporations, and shall have power to make constitutions and by-laws for the government of their affairs.

[Acts 1925, S.B. 84.]

**Art. 1402. Lodges: Property**

Such orders, grand and subordinate, shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary with the seal. The power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions as may be from time to time prescribed or established by the grand body to which the subordinate is attached.

[Acts 1925, S.B. 84.]

**Art. 1403. Lodges: Demise**

Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority.

[Acts 1925, S.B. 84.]

**Art. 1404. Lodges: Loans**

Any grand body incorporated under this subdivision shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions, or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect. Upon sale of any real estate under such lien, such grand body may become the purchaser thereof, and hold title thereto.

[Acts 1925, S.B. 84.]

**Art. 1405. Lodges: Duration**

Any grand body incorporating under this subdivision may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of the officers and members.

[Acts 1925, S.B. 84.]

**Art. 1406. Existing Lodge**

Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this subdivision.

[Acts 1925, S.B. 84.]

**Art. 1407. Lodges: Tax**

Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax.

[Acts 1925, S.B. 84.]

**Arts. 1408, 1409. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1**

3. EDUCATIONAL

**Arts. 1410, 1411. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2**

**Arts. 1412 to 1415. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1**

**Art. 1415a. Repealed by Acts 1971, 62nd Leg., p. 2016, ch. 620, § 2, eff. Jan. 1, 1972**

See, now, Education Code, § 32.01 et seq.

CHAPTER TEN. PUBLIC UTILITIES

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Article

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1. TELEGRAPH

**Art. 1416. Public Ways: Use**

Corporations created for the purpose of constructing and maintaining magnetic telegraph lines, are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the

public roads, streets and waters of this State, in such manner as not to incommode the public in the use of such roads, streets and waters.

[Acts 1925, S.B. 84.]

#### Art. 1417. Right of Way

They may also enter upon any lands owned by private persons or by a corporation, in fee or less estate, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph line, and from time to time appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and when erected, from time to time as may be required, to repair the same, and shall have the right of eminent domain to obtain the right of way and condemn lands for the use of the corporation.

[Acts 1925, S.B. 84.]

#### Art. 1418. Competitor: Rights

No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies.

[Acts 1925, S.B. 84.]

#### Art. 1419. Interstate Lines

Any corporation created as herein provided may construct, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond, the limits of this State.

[Acts 1925, S.B. 84.]

#### Art. 1420. Consolidations

They shall have power to lease or attach to their line or lines other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree.

[Acts 1925, S.B. 84.]

#### Art. 1421. Consolidation: Powers

Any telegraph company organized under the laws of this State may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies organized under the laws of the United States or of any State or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized

under the provisions of this title, and be subject to the same liabilities.

[Acts 1925, S.B. 84.]

#### Art. 1422. Municipal Regulation

The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass, may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed. After the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration.

[Acts 1925, S.B. 84.]

### 2. TELEPHONE AND TELEGRAPH

#### Art. 1423. Consolidations

Any person, firm or corporation organized under the laws of Texas owning a local telephone exchange, whether wholly within or partly beyond the State limits, shall have power to purchase and may join with any other individual, firm or corporation in constructing, leasing, owning, using or maintaining any other local telephone exchange, upon such terms as may be agreed upon between such persons, or the directors or managers of the respective corporations, and may own and hold any interest in such local telephone exchange or may become lessees thereof on such terms as the respective persons, firms or corporations may agree. In case of the purchase, lease or acquisition of one local telephone exchange by a company owning another when both systems are operating in the same incorporated city or town, the consent of such city or town shall be secured.

[Acts 1925, S.B. 84.]

#### Art. 1424. Consolidation: Mode

Any telephone company organized under the laws of Texas owning a local telephone exchange may at any regular meeting of the stockholders thereof by vote of persons holding a majority of shares of the stock of such company, unite or consolidate such local exchange with the local exchange of any other company or companies organized under the laws of the United States, or of any State or territory, by the consent of the company with which it may so consolidate or unite. Such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. Where two or more local exchanges are operating in the same incorporated city or town, the consent of such city or town shall be secured for such consolidation.

[Acts 1925, S.B. 84.]

**Art. 1425. Consolidation: Rates**

In case of the purchase, lease, acquisition or consolidation of one local telephone exchange with another, when both systems are operating in the same incorporated city or town, the rates charged for local telephone service after such consolidation shall not exceed the rate charged by the company charging the lowest rates in such city or town at the time of such purchase, lease, acquisition or consolidation, unless authorized by such city or town.

[Acts 1925, S.B. 84.]

**Art. 1426. Transfer of Messages**

All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another, are hereby required to arrange for conversations or transfer of messages as hereinafter provided.

[Acts 1925, S.B. 84.]

**Art. 1427. Telephone Connections**

All persons, companies, firms or corporations doing a telephone business in this State shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another. Such connection shall be made through the switchboard of such persons, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another.

[Acts 1925, S.B. 84.]

**Art. 1428. Telegraph Connections**

Each telegraph company or person, firm, corporation or association engaged in the business of accepting and transmitting messages to and from different points in this State, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this subdivision.

[Acts 1925, S.B. 84.]

**Art. 1429. Transfers Excepted**

In no case shall any message be transferred from one line to another against the will of the company first handling the same, when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company. No telegraph or telephone company shall, under the provisions of this subdivision be compelled to receive from the wires or lines of any other telegraph or telephone

company and convey to its final destination any message originating at any point on its own lines.  
[Acts 1925, S.B. 84.]

**Art. 1430. Transfer Hearing**

The city council in incorporated cities, and the commissioners court at points where there is no city council, shall on application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary, and upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for the transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines.

[Acts 1925, S.B. 84.]

**Art. 1431. Penalty**

Whenever the city council or commissioners court shall enter an order in compliance with Arts. 1428 and 1429 requiring telephone or telegraph companies to arrange for conversation or transfer of messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and failing to do so, they shall forfeit to the State of Texas on suit by the county or district attorney, the sum of ten dollars for each day they so neglect. The penalty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect.

[Acts 1925, S.B. 84.]

**Art. 1432. Appeals**

Any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided, shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined.

[Acts 1925, S.B. 84.]

**Art. 1432a. Obstruction or Falsification of Emergency Telephone Calls; Penalty**

Sec. 1. Any person who shall wilfully refuse to immediately relinquish a party line when such line is needed for an emergency call to a fire department, or police department, or for medical aid or ambulance service, after having been informed that the line is needed for such emergency call, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or shall

be confined in the county jail for not more than one month, or both such fine and confinement.

Sec. 2. Any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency call to a fire department or police station or for medical aid or ambulance service shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or shall be confined in the county jail for not more than one month, or both such fine and confinement.

Sec. 3. "Party line" as used in this Section means a subscriber's telephone circuit, consisting of two (2) or more main telephone stations connected therewith, each station with a distinctive ring or telephone number. "Emergency" as used in this Section, means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

Sec. 4. Every telephone directory hereafter distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense provided for in Sections 1 and 2 of this Act, such notice to be printed in type which is not smaller than the smallest type on the same page and to be preceded by the word "warning" printed in type at least as large as the largest type on the same page; provided, that the provisions of this Section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories, nor to any telephone directory heretofore printed or distributed to the general public. Once each year there must be enclosed in each telephone bill mailed to persons using party line telephones a notice of substance of the provisions of Sections 1 and 2 of this Act. Any person, firm or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this Section and from which the notice herein provided is wilfully omitted or who wilfully fails to enclose the notice required to be enclosed in bills by this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

[Acts 1961, 57th Leg., p. 578, ch. 272.]

### 3. WATER

#### Art. 1433. Privileges

Any water corporation shall have the power to sell and furnish such quantities of water as may be required by the city, town or village where located for public or private buildings or for other purposes; and such corporations shall have the power to lay pipes, mains and conductors for conducting water through the streets, alleys, lanes and squares of any

such city, town or village, with the consent of the governing body thereof, and under such regulations as it may prescribe. Such corporation is further authorized to lay its pipes, mains and conductors and other fixtures for conducting water through, under, along, across and over all public roads, streets and waters lying and situated outside the territorial limits of any such city, town, or village in such manner as not to incommode the public in the use of such roads, streets and waters. Any such corporation shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right of way of any State Highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court may, if it so desires, designate the place along the right of way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such corporation, at its own expense, to relocate its lines on a State Highway or county road outside the limits of an incorporated city or town, so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such corporation and specifying the line or lines to be moved, and indicating the place on the new right of way where such line or lines may be placed. When deemed necessary to preserve the public health, any company or corporation chartered under the laws of this State for the purpose of constructing waterworks or furnishing water supply to any city or town, shall have the right of eminent domain to condemn private property necessary for the construction of supply reservoirs or standpipes for water work.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 1370, ch. 622, § 1.]

#### Art. 1433a. City or Town Laying Pipes, Etc., Outside Its Limits

Any incorporated city or town, in addition to powers otherwise existing, is authorized to lay its pipes, mains and conductors and other fixtures for conducting water through, under, along, across and over all public roads and waters lying and situated outside the territorial limits of such city or town in such manner as not to incommode the public in the use of such roads. Any such city or town shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right of way of any State Highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court may, if it so desires, designate the place along the right of way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such city or town, at its

own expense, to relocate its lines on a State Highway or county road outside the limits of an incorporated city or town, so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such city or town and specifying the line or lines to be moved, and indicating the place on the new right of way where such line or lines may be placed.

[Acts 1949, 51st Leg., p. 1370, ch. 622, § 1.]

**Art. 1434. Contracts**

The governing body of any city, town or village in which any water corporation shall exist, is hereby authorized to contract with any such corporation for supplying with water the streets, alleys, lots, squares and public places in any such city, town or village.

[Acts 1925, S.B. 84.]

**Art. 1434a. Water Supply or Sewer Service Corporations**

Formation of Corporation

Sec. 1. On and after the passage of this Act, three or more persons who are citizens of the State of Texas, may form a corporation for the purpose of furnishing a water supply or sewer service, or both, to towns, cities, private corporations, individuals, and military camps and bases, and may provide in the charter of such corporation that no dividends shall ever be paid upon the stock and that all profits arising from the operation of such business shall be annually paid out to cities, towns, corporations, and other persons who have during the past year transacted business with such corporation, in direct proportion to the amount of business so transacted, provided that no such dividends shall ever be paid while any indebtedness of the corporation remains unpaid and, provided also, that the Directors of such corporation may allocate to a sinking fund such amount of the annual profits as they deem necessary for maintenance, upkeep, operation, and replacements.

Withdrawal of Water from Guadalupe or Comal Rivers, or Tributaries or Springs

Sec. 1-a. It shall be unlawful for any person, firm, association, or corporation to withdraw any water from the Guadalupe River or Comal River or any tributaries of such rivers or springs emptying into such rivers, or either of them, for the purpose of transporting such water to any point or points located outside of the natural watersheds of such rivers.

Any such withdrawal or attempted withdrawal of water from said rivers, springs, and/or tributaries may be enjoined in a suit for injunction brought by any person, municipality, or corporation owning riparian rights in or along said rivers. The venue of such suits shall be in the District Court of the county where such withdrawal or attempted withdrawal occurred.

Contracts with Federal Agencies

Sec. 2. The said corporation is hereby vested with power to negotiate and contract with any and

all Federal Government agencies including, without exclusion because of enumeration, the Emergency Conservation Acts, Public Works Acts, Self-Liquidating Acts, Housing Unit Acts, Colonization Acts, Conservation Acts, Emergency Relief and Reconstruction Acts, and the Reconstruction Finance Corporation Act of January 22, 1932, Acts of the Seventy-second Congress of the United States of America, First Session, and with others, for the acquisition, construction, and/or maintenance of such project and improvements; to obtain money from such Federal Government agency or other sources for the purpose of financing said acquisition, and encumber the properties so acquired or constructed and the income, fees, rents, and other charges thereafter accruing to the said corporation in the operation of said properties; and to evidence the transaction by the issuance of bonds, notes, or warrants to secure the funds so obtained. But it is hereby expressly provided that the bonds, notes, and/or warrants so issued shall not constitute general obligation or indebtedness of the said corporation, but shall represent solely a charge upon specifically encumbered properties and the revenue therefrom, as herein provided.

Application for Charter to Secretary of State; Board of Directors

Sec. 3. (a) The persons applying for a charter for such corporation shall make application to the Secretary of State in the manner now provided by law for private corporations and in the name designated for such corporation shall use the words "Water Supply Corporation." The application for charter shall name all the members of the board of directors. The number of directors may be increased from time to time by amendment to the by-laws but there shall never be more than twenty-one (21) members of said board.

(b) The by-laws of the Corporation may provide that the directors be divided into either two (2) or three (3) classes, each class to be as near equal in number as possible, the terms of office of directors of the first class to expire at the annual meeting of the shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two (2) classes, or until the third succeeding annual meeting, if there be three (3) classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

Acquisition of Water Supply; Operation of Plants and Equipment; Eminent Domain

Sec. 4. Such Water Supply Corporations shall have the right to purchase, own, hold and lease and

otherwise acquire water wells, springs and other sources of water supply, to build, operate and maintain pipe lines for the transportation of water, to build and operate plants and equipment necessary for the distribution of water and to sell water to towns, cities and other political subdivisions of the State of Texas, to private corporations and to individuals. Such corporations shall have the right of eminent domain to acquire rights-of-way and shall have the right to use the rights-of-way of the public highways of the State for the laying of pipe lines under supervision of the State Highway Commission.

Annual Election of Officers and Board Meetings; Salaries

Sec. 5. After the issuance of a charter and annually thereafter following the annual membership or stockholders meeting, the board of directors shall elect a president, a vice president, and a secretary-treasurer and may require of such officers bonds for the faithful performance of their duties. The annual meeting of the members or stockholders of the corporation shall be held at any time between January 1 and May 1 of each year, at such time as shall be specified by the by-laws or the board of directors of the corporation. The salaries of all the officers of said corporation except that of the secretary-treasurer and of the manager whose salary is hereinafter referred to, shall not exceed Five Thousand Dollars (\$5,000) per year. The salary of the secretary-treasurer shall be fixed by the board of directors at a sum commensurate with the duties required of him.

Manager Elected by Board of Directors

Sec. 6. The business of the corporation may be handled under the direction of the board of directors, by a manager to be elected by a majority vote of the board and he shall be employed at a salary to be fixed by the board of directors.

Board of Directors may Employ Counsel

Sec. 7. The Board of Directors may employ counsel to represent said corporation and may by agreement with him fix an annual retainer and the fees to be paid for his services and said Board of Directors may if they deem it necessary employ additional counsel from time to time.

Depository for Funds

Sec. 8. The Board of Directors shall select as depository for the funds of said corporation, a National Bank or State Bank within the State of Texas and shall require of said depository such bond as the Board deems necessary for the protection of said corporation; and such funds as the Board of Directors may from time to time allocate to a sinking fund for replacement, amortization of debts and the payment of interest which shall not be required to be expended within the year in which the same is deposited, shall be invested in bonds or other evidence of indebtedness of the United States of America or deposited at interest in such National Bank or State Bank in a savings account, or in shares or

share accounts of Building and Loan Associations and Savings and Loan Associations doing business in this State when such shares are insured under and by virtue of the Federal Savings and Loan Insurance Corporation.

[Amendment by Acts 1961, 57th Leg., 1st C.S., p. 192, ch. 54, § 1, see § 8, post.]

Sec. 8. The board of directors shall select as depository for the funds of said corporation, a bank within the State of Texas which is insured with the Federal Deposit Insurance Corporation and shall require of said depository such bond as the board deems necessary for the protection of said corporation; and such funds as the board of directors may from time to time allocate to a sinking fund for replacement, amortization of debts and the payment of interest which shall not be required to be expended within the year in which the same is deposited shall be invested in bonds or other evidence of indebtedness of the United States of America or deposited at interest in such bank within the State of Texas which is insured with the Federal Deposit Insurance Corporation in a savings account.

[Amendment by Acts 1961, 57th Leg., p. 158, ch. 81, § 1, see § 8, ante.]

Exemption from Texas Securities Act

Sec. 9. The provisions of the Texas Securities Act<sup>1</sup> shall not apply to any note, bond, or other evidence of indebtedness issued by any corporation doing business in this State pursuant to this Act, to the United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Securities Act shall not apply to the issuance of membership certificates or stock certificates of any corporation organized under the provisions of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 202, ch. 76; Acts 1941, 47th Leg., p. 666, ch. 407, §§ 1, 2; Acts 1959, 56th Leg., p. 939, ch. 435, § 1; Acts 1961, 57th Leg., p. 158, ch. 81, § 1; Acts 1961, 57th Leg., 1st C.S., p. 192, ch. 54, §§ 1, 2; Acts 1967, 60th Leg., p. 804, ch. 338, § 1, eff. June 8, 1967; Acts 1973, 63rd Leg., p. 397, ch. 175, § 1, eff. May 25, 1973.]

<sup>1</sup> Article 581-1 et seq.

4. GAS AND LIGHT

Art. 1435. Powers

Gas, electric current and power corporations shall have power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold and use such lands, right of way, easements, franchises, buildings and structures as

may be necessary for the purpose of such corporation.

[Acts 1925, S.B. 84.]

**Art. 1435a. Cooperation by Entities in Electric Facilities Construction, Financing, Etc.**

Purpose of Act

Sec. 1. The purpose of this Act is to clarify and make definite and secure the right and authority of entities, either public or private, which are engaged in the generation, transmission, or distribution of electric energy, to join together as cotenants or co-owners in the planning, financing, acquisition, construction, ownership, operation, and maintenance of electric generating units and plants, electric transmission lines, and other electric facilities to the end that each public entity or private entity will owe all of the duties and will have and be secure in all of the rights, powers, and liabilities and shall be entitled to all of the privileges and exemptions attributable to its undivided interest as provided by law with respect to an entire interest in electric facilities planned, financed, acquired, constructed, owned, operated, and maintained by it alone, as one means of achieving economies of scale in providing electric energy to the public and promoting the economic development of the state and its natural resources and to meet the future power needs of the state and its inhabitants. The provisions of this Act shall be construed to effectuate said purposes, but shall not be construed to otherwise enlarge, change, or modify in any way the rights, powers, or authorities of any entity under existing law with reference to the generation, transmission, distribution, or sale of electric power and energy. Nothing in this Act shall be construed to alter, change, abrogate, or otherwise affect existing contracts in force at the time this Act takes effect.

Definitions

Sec. 2. As used in this Act:

(1) "Entity" means any public or private corporation, association, or other legal entity, including cities and towns of every class, electric cooperative corporations, and conservation and reclamation districts, authorized to and engaged in the generation, transmission, or distribution of electric energy for sale to the public.

(2) "Public entity" means any entity which is an agency or subdivision of this state.

(3) "Private entity" means any entity not a public entity.

(4) "Electric facilities" means any facilities necessary or incidental to the generation of electric power and energy or the transmission thereof, including electric generating units, electric generating plants, electric transmission lines, plant sites, rights-of-way, and real and personal property and equipment and rights of every kind useful in connection therewith.

Agreements by Entities

Sec. 3. Any two or more entities shall have authority to enter into agreements for the planning, financing, acquisition, construction, ownership, operation, and maintenance of jointly owned and operated electric facilities and in connection therewith to construct, acquire, own, operate, and maintain electric facilities, and each public entity or private entity shall owe all of the duties and shall have and be entitled to all of the rights, powers, and liabilities and shall be entitled to all of the privileges and exemptions attributable to its undivided interest which it would have with respect to an entire interest in electric facilities planned, financed, acquired, constructed, owned, operated, and maintained by it alone.

Rights and Powers of Participating Entities

Sec. 4. Without limiting the general scope and application of Section 3 of this Act:

(1) Each participating entity shall have the right and power to use its means and assets in planning, acquiring, constructing, owning, operating, and maintaining its undivided interest and share in electric facilities, and to issue bonds and other securities to raise funds for those purposes in the same way and to the same extent and subject to all of the conditions which would apply if the undivided interest of the entity were an entire interest in electric facilities.

(2) Each participating public entity and each participating private entity shall have the right and power to acquire, for the use and benefit of all participating entities, by purchase or through the exercise of the power of eminent domain, lands, easements, and properties for the purpose of jointly owned electric facilities, and shall have the power to transfer or convey such lands, easements, and properties, or interests therein, or otherwise to cause such lands, easements, and properties, or interests therein, to become vested in other participating entities to the extent and in the manner agreed between the participating entities. In all cases in which a participating entity exercises the right and power of eminent domain conferred hereby, it shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the right and power of eminent domain hereby conferred shall include the right and power to take the fee title in land so condemned, except that no participating entity has the right or power to take by the exercise of the power of eminent domain any electric facilities, or interest therein, belonging to any other entity.

(3) Each participating private entity shall render for ad valorem taxation its undivided fractional interest in the jointly owned electric facilities, and all ad valorem taxes and similar taxes shall be levied and assessed separately

against the undivided interest of each participating private entity. All taxes or assessments (including but not limited to excise taxes and taxes on the sale, lease, or use of properties or services) attributable to any property or service bought, sold, leased, or used in connection with the construction, maintenance, repair, or operation of the jointly owned electric facilities shall be levied, imposed, and collected as if the property or service had been bought, sold, leased, or used separately to or by each participating entity in proportion to the entity's respective undivided interest in the jointly owned electric facilities. No participating entity shall be liable for ad valorem taxes attributable to another participating entity's interest in the joint electric facilities or for any other taxes attributable to any property or service which is owned or is bought, sold, leased, or used by any other participating entity in connection with the construction, maintenance, repair, or operation of the jointly owned electric facilities. Each participating entity shall be entitled to the same constitutional and statutory exemption from ad valorem taxes and all other taxes (including but not limited to excise, sales and use taxes) attributable to the participating entity's interest in the ownership of the jointly owned electric facilities and the purchase, sale, lease, or use of properties or services in connection with the construction, maintenance, repair, or operation of the jointly owned electric facilities to the extent that the entity would have been exempt from the tax if its undivided interest were an entire interest in electric facilities and in property and services used or acquired in connection therewith. Each exempt entity shall be entitled to exemption certificates and other certificates and statements as provided by law to evidence or make effective the exemption.

(4) Each participating entity shall have the right and power to enter into contracts for specialized insurance appertaining to property and risks in connection with and incident to the ownership, operation, and maintenance of electric facilities, in addition to the usual forms of available insurance. Each participating entity shall be authorized to enter into contracts for insurance for the use and benefit of each of the other participating entities as though the insurance were for its sole benefit and to cause the rights of the other participating entities to be protected under the contracts according to their respective undivided interests or entitlements under applicable agreements between the participating entities.

Construction of Act

Sec. 5. Notwithstanding any other provision of this Act, nothing herein shall have the effect of, or be construed as, altering, amending, or repealing the statutory purposes provided for by any statute en-

acted by the legislature of Texas pertaining to the creation, establishment, or operation of an entity which becomes a co-owner under the provisions of this Act.

Severability

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 369, ch. 166, eff. Aug. 27, 1973.]

**Art. 1436. Right of Way**

Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right-of-way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right-of-way, interurban railroad, street railroad, canal or stream in this State, any street or alley of any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. Such lines shall be constructed upon suitable poles in the most approved manner, or pipes may be placed under the ground, as the exigencies of the case may require. [Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 730, ch. 306, § 1, eff. Aug. 28, 1967.]

**Art. 1436a. Construction of Lines on and across Roads and Streets**

Corporations

Sec. 1. Corporations organized under the Electric Cooperative Corporation Act<sup>1</sup> of this State, and all other corporations (including River Authorities created by the Legislature of this State) engaged in the generation, transmission and/or the distribution of electric energy in Texas and whose operations are subject to the Judicial and Legislative processes of this State, shall have the right to erect, construct, maintain and operate lines over, under, across, upon and along any State highway or county road in this State, except within the limits of an incorporated city or town; and to maintain and operate existing lines located on such highways and county roads; and to erect, maintain and operate lines over, across and along the streets, alleys and other public property in any incorporated city or town in this State, with the consent and under the direction of the governing body of such city or town. Except as modified or changed by ordinance or regulation in incorporated cities and towns, all lines for the transmission and distribution of electric energy, whether along highways or elsewhere, shall be constructed, operated and maintained, as to clearances, in accordance with the National Electrical Safety Code, as published in March, 1948, by the National Bureau of Standards, Handbook 30, as revised by Handbook 81,

published by the National Bureau of Standards in November, 1961, provided that lines along highways and county roads shall be single pole construction, and provided that at any place where a transmission line crosses a highway or road it shall be at least twenty-two (22) feet above the surface of the traffic lane, and further provided that all lines shall be at least twenty-two (22) feet above the surface of any railroad track or railroad siding. Any such corporation shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right-of-way of any State highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court, may, if it so desires, designate the place along the right-of-way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such corporation, at its own expense, to re-locate its lines on a State highway or county road outside the limits of an incorporated city or town, so as to permit the widening of the right-of-way, changing of traffic lanes, improvement of the road bed, or improvement of drainage ditches located on such right-of-way by giving thirty (30) days' written notice to such corporation and specifying the line or lines to be moved, and indicating the place on the new right-of-way where such line or lines may be placed. In the event a State highway or county road on which lines have been built passes through or into an unincorporated city or town, which thereafter becomes an incorporated city or town, the corporation owning such lines shall continue to have the right to build, maintain and operate its lines along, across, upon and over the roads and streets within the corporate limits of such city or town for a period of ten (10) years from and after the date of such incorporation, but thereafter only with the consent of the governing body of such city or town, but this provision shall not be construed as prohibiting such city or town from levying taxes and such special charges for the use of the streets as are authorized by Article 7060, Revised Civil Statutes of the State of Texas; and the governing body of such city or town may require any such corporation, at its own expense, to re-locate its poles and lines so as to permit the widening or straightening of streets, by giving to such corporation thirty (30) days' notice and specifying the new location for such poles and lines along the right-of-way of such street or streets.

Municipal Plants and Systems

Sec. 1a. Any incorporated city or town in this State which owns and operates an electric generating plant or operates transmission lines and/or distribution system or systems shall have the right to erect, construct, maintain and operate lines over, under, across, upon and along any state highway or county road in this State, except within the limits of another incorporated city or town; and to maintain

and operate existing lines located on such highways and county roads; and to erect, maintain and operate lines over, across and along the streets, alleys and other public property in any other incorporated city or town in this State with the acquiescence or consent and under the regulations of the governing body of such city or town. Except as modified or changed by ordinance or regulation in incorporated cities and towns, all lines for the transmission and distribution of electric energy, whether along highways or elsewhere, shall be constructed, operated and maintained in accordance with the National Electrical Safety Code, as published in March, 1948, by the National Bureau of Standards, Handbook 30, as revised by Handbook 81, published by the National Bureau of Standards in November, 1961, provided that lines along highways and county roads shall be single pole construction, and provided that at any place where a transmission line crosses a highway or road it shall be at least twenty-two (22) feet above the surface of the traffic lane, and further provided that all lines shall be at least twenty-two (22) feet above the surface of any railroad track or railroad siding. Any such incorporated city or town authorized to build lines along highways and public roads under this Section shall notify the State Highway Commission or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right-of-way of any state highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court, may, if it so desires, designate the place along the right-of-way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such municipal corporation, at its own expense, to re-locate its lines on a State highway or county road outside the limits of an incorporated city or town, so as to permit the widening of the right-of-way, changing of traffic lanes, improvement of the road bed, or improvement of drainage ditches located on such right-of-way, by giving thirty (30) days' written notice to such municipal corporation owning such lines, and specifying the line or lines to be moved, and indicating the place on the new right-of-way where such line or lines may be placed. In the event a State highway or county road on which lines have been built passes through or into an unincorporated city or town, which thereafter becomes an incorporated city or town, the municipal corporation owning such lines shall continue to have the right to build, maintain and operate its lines along, across, upon and over the roads and streets within the corporate limits of such city or town for a period of ten (10) years from and after the date of such incorporation, but thereafter only with the consent of the governing body of such city or town; and the governing body of such city or town may require the municipal corporation owning such lines, at its own expense, to relocate its poles and lines so as to permit the widening or straightening of

streets, by giving to the municipal corporation owning such lines thirty (30) days' notice and specifying the new location for such poles and lines along the right-of-way of such street or streets. Nothing herein shall be construed as granting the right to such municipal corporation to maintain existing lines in any area, which is included within the corporate limits of another city or town prior to the effective date of this Act, without the consent of the governing body of such other city or town.

Partial Invalidity

Sec. 3. If any section, sentence, phrase, clause, or any part of any section, sentence, phrase or clause of this Act shall, for any reason, be held invalid, such decision shall not affect the remaining portions of this Act and it is hereby declared to be the intention of this Legislature to have passed each section, sentence, phrase, clause or part thereof irrespective of the fact that any other section, sentence, phrase or clause or part thereof may be declared invalid.

[Acts 1949, 51st Leg., p. 427, ch. 228; Acts 1967, 60th Leg., pp. 730, 731, ch. 306, § 2, eff. Aug. 28, 1967.]

<sup>1</sup>Article 1528b.

Section 1 of the act of 1967 amended article 1436; sections 3 and 4 provided:

"Sec. 3. All other statutes, or parts of statutes, in conflict with the provisions of this Act are hereby expressly repealed; provided, however, that this Act does not amend, repeal or alter Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w-1 through Article 6674w-5, Vernon's Texas Civil Statutes), and provided further, this section shall not change, modify or limit the rights granted corporations, cities and towns in Section 2 of this Act.

"Sec. 4. If any section, sentence, phrase, clause, or any part of any section, sentence, phrase or clause of this Act shall, for any reason, be held invalid, such decision shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of this Legislature to have passed each section, sentence, phrase, clause, or part thereof irrespective of the fact that any other section, sentence, phrase or clause or part thereof may be declared invalid."

Section 2 of the act of 1949 provided that all statutes or parts of statutes in conflict with the provisions of this Act are hereby expressly repealed.

Section 4, declaring an emergency, recites that the distribution of electric energy has been based on the legal concept that Commissioners Courts had authority to grant franchises for the use of roads and highways, but that the Supreme Court has held that Commissioners Courts have no such authority.

**Art. 1436b. Use of Roads and Streets in Distribution of Gas**

Sec. 1. Any person, firm or corporation or incorporated city or town engaged in the business of transporting or distributing gas for public consumption shall have the power to lay and maintain pipes, mains, conductors and other facilities used for conducting gas through, under, along, across and over all public highways, public roads, public streets and alleys, and public waters within this State; provided that within the corporate limits of an incorporated city or incorporated town such right shall be dependent upon the consent and subject to the direction of its governing body. Any such person, firm or corporation or incorporated city or town shall notify the State Highway Commission or the Commissioners Court having jurisdiction, as the case may be, when it proposes to lay any such pipes, mains, conductors and other fixtures for conducting gas within the right-of-way of any state highway or county road outside the limits of an incorporated city or incorporated town, whereupon the Highway Commission or the Commissioners Court, if it so desires, may designate

the place upon the right-of-way where the same shall be laid. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such person, firm or corporation or incorporated city or town at its own expense to relocate its pipes, mains, conductors or other fixtures for conducting gas on a state highway or county road outside the limits of an incorporated city or incorporated town so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such person, firm or corporation or incorporated city or town and specifying the facility or facilities to be moved and indicating the place on the new right-of-way where such facility or facilities may be placed. Such person, firm or corporation or incorporated city or town shall replace the grade and surface of such road or highway at its own expense.

Sec. 2. If after the effective date of this Act an unincorporated area becomes incorporated, any person, firm or corporation or incorporated city or town which, at the date of such incorporation, has pipes, mains, conductors or other facilities within such area so incorporated, may continue to exercise the rights conferred by Section 1 hereof for ten (10) years after the date of such incorporation without consent but subject to the direction of the governing body.

Sec. 3. [General repealer.]

Sec. 4. If any section, sentence, phrase, clause or any part of any section, sentence, phrase or clause of this Act shall for any reason be held invalid, such decision shall not affect the remaining portions of this Act; and it is hereby declared to be the intention of this Legislature to have passed each section, sentence, phrase, clause, or part thereof, irrespective of the fact that any other section, sentence, phrase or clause or part thereof may be declared invalid. [Acts 1951, 52nd Leg., p. 829, ch. 470.]

**Art. 1436c. Safety of Persons Engaged in Activities in Proximity of High Voltage Electric Lines; Restrictions**

Definitions

Sec. 1. In this Act:

(1) "High voltage" means voltage in excess of 600 volts measured between conductors or measured between a conductor and the ground.

(2) "Overhead line" means all bare or insulated electrical conductors installed above ground except those conductors that are de-energized and grounded or that are enclosed in rigid metallic conduit.

(3) "Authorized person" means:

(A) employees of a light and power company with respect to the electrical system of such company, employees of an electric

cooperative with respect to the electrical system of such cooperative, employees of a city with respect to the electrical system of such city, and the employees of a transportation system with respect to the electrical circuits of such system;

(B) employees of communication utilities, or state and county or municipal agencies having authorized circuit construction on the poles or the structures of an electric power company, an electric cooperative, a city or transportation system or communication system;

(C) employees of an industrial plant with respect to the electrical system of such plant;

(D) employees of any electrical or communications contractor with respect to work under his supervision.

(4) "Warning sign" means a weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering reading as follows: **"WARNING—UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."**

#### Exceptions

Sec. 2. This Act does not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of rail transportation systems, electrical generating, transmission or distribution systems, or communication systems by an authorized person.

#### Six-foot Restriction; Functions or Activities of Employees

Sec. 3. Unless danger against contact with high voltage overhead lines has been effectively guarded against pursuant to the provisions of Section 6 of this Act, no person, firm, corporation, or association shall require any employee to perform and no person, firm, corporation, or association shall, individually or through an agent or employee, perform any function or activity upon any land, building, highway, or other premises if at any time during the performance of any function or activity, it is possible that the person performing the function or activity shall move or be placed within six feet of any high voltage overhead line or if it is possible for any part of any tool, equipment, machinery, or material used by such person to be brought within six feet of any high voltage overhead line during the performance of any such function or activity.

#### Six-foot Restriction; Operation of Machinery, Etc.

Sec. 4. Unless danger against contact with high voltage overhead lines has been effectively guarded against pursuant to the provision of Section 6 of this Act, no person, firm, corporation, or association shall, individually or through an agent or employee, erect, install, operate, move, transport, handle, or

store any tool, machinery, equipment, supplies, materials, house, or other building or structure or any part thereof within six feet of any high voltage overhead line.

#### Posting of Warning Signs, Insulated Guards

Sec. 5. No person, firm, corporation, or association shall, individually or through an agent or employee, or as an agent or employee, operate any crane, derrick, power shovel, drilling rig, hayloader, haystacker, mechanical cotton picker, pile driver, hoisting equipment, or similar apparatus, any part of which is capable of vertical, lateral, or swinging motion, unless:

(1) there is posted and maintained a warning sign, as herein defined, legible at 12 feet and placed as follows:

(A) within the equipment readily visible to the operator of such equipment when at the controls of such equipment; and

(B) on the outside of equipment in such number and location as to be readily visible to mechanics or other persons engaged in the work operations; and

(2) there shall be installed an insulated cage-type guard or protective device about the boom or arm of all equipment, except backhoes or dippers and, where the equipment includes a lifting hook device, all lifting lines are equipped with insulator links on the lift hook connection.

#### Ten-foot Restriction; Operation of Equipment

Sec. 5A. In addition to the minimum distances prescribed in Sections 3 and 4 of this Act, the operation of equipment or machines described in Section 5 or any part of such equipment or machines within 10 feet of any high voltage overhead line shall be unlawful unless danger against contact with high voltage overhead lines has been effectively guarded against pursuant to the provisions of Section 6 of this Act.

#### Temporary Clearance of Lines

Sec. 6. When any person, firm, or corporation desires to temporarily carry on any function, activity, work, or operation in closer proximity to any high voltage overhead line than permitted by this Act, the person or persons responsible for the work to be done shall promptly notify the operator of the high voltage line. The work shall be performed only after satisfactory mutual arrangements have been negotiated between the owner or the operator of the lines or both and the person or persons responsible for the work to be done for temporary mechanical barriers separating and preventing contact between material, equipment, or persons and high voltage electric lines, temporary de-energization and grounding, or temporary relocation or raising of the lines. The actual expense incurred by any operator of high voltage lines in providing clearances as above set out shall be paid by the person or persons responsible for

the work to be done in the vicinity thereof and the operator of the lines may require such payment in advance, such operator being without obligation to provide such clearance until such payment shall have been made. Should the actual expense be less than the payment made the difference shall be refunded. The operator of the lines shall be given not less than 48 hours' advance notice to arrange for such temporary clearances.

Violations and Penalties

Sec. 7. (a) Every person, firm, corporation, or association and every agent or employee of such person, firm, corporation, or association who violates any of the provisions of this Act shall be fined not less than \$100, nor more than \$1,000 or confined in jail for not more than one year or both.

(b) If a violation of this Act results in physical or electrical contact with any high voltage overhead line, the person, firm, corporation, or association violating the provisions of this Act shall be liable to the owner or operator of such high voltage line for all damage to such facilities and for all liability incurred by such owner or operator as a result of any such contact.

[Acts 1971, 62nd Leg., p. 76, ch. 41, eff. March 30, 1971.]

**Art. 1437. Finances**

Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State, whenever the same may be applicable.

[Acts 1951, 52nd Leg., p. 829, ch. 470.]

**Art. 1438. Discrimination**

It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances.

[Acts 1951, 52nd Leg., p. 829, ch. 470.]

**Art. 1438a. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, § 4, eff. Sept. 1, 1967**

*Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code, repealed article 1438a effective September 1, 1967.*

**5. SEWERAGE**

**Art. 1439. Eminent Domain**

Every company or corporation incorporated under the laws of this State for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this State, shall be empowered by the exercise of the right of eminent domain, to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon

which to maintain vats, filtration pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for the successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health or convenience. The right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town, except as permitted or required by the city or town granting franchise to the company or corporation seeking the right of condemnation.

[Acts 1925, S.B. 84.]

**6. DEPOSITS**

**Art. 1440. Deposit for Installing Service**

Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing the same, shall pay six per cent (6%) interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid annually on demand or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest, not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives.

[Acts 1925, S.B. 84; Acts 1963, 58th Leg., p. 50, ch. 32, § 1.]

**Art. 1440a. Deposit for Installing Service**

Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing any such service, shall pay six per cent (6%) interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid annually on demand, or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. Whoever violates any provision of this Article shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), or be confined in jail not less than six (6) months nor more than one year, or both.

[Acts 1925, S.B. 84; Acts 1963, 58th Leg., p. 50, ch. 32, § 2.]

**7. REPORTS**

**Art. 1441. Corporations Subject**

Every corporation within this State owning, leasing or operating in this State, in cities or towns of

over twenty-five hundred population according to the preceding Federal census, a street railway, electric light or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually on or before the first day of March, file the report hereinafter provided with the Secretary of State, upon blank forms to be furnished by said officer.

[Acts 1925, S.B. 84.]

#### Art. 1442. Report

The report shall show the following facts:

1. The authorized capital stock of such corporation, the amount of such stock that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.

2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, and the price of such sale, the rate of interest upon such bonds, and when such bonds mature.

3. Any other fixed lien or mortgage upon such property, and the amount thereof.

4. The floating indebtedness of such corporation, including all bills payable of whatever nature.

5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.

6. The annual cost of operating such corporation, showing under separate items:

- (a) amount paid for salaries;
- (b) amount paid for labor;
- (c) fixed charges including interest, taxes and insurance, giving each separately;
- (d) amount paid for fuel;
- (e) amount paid for extensions, repairs and maintenance, giving each separately;
- (f) amount paid for claims or suits for damages;
- (g) amount paid for miscellaneous expenses.

7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, sewerage, power, water, gas, street railway fares and tickets.

[Acts 1925, S.B. 84.]

#### Art. 1443. Additional Reports

Such corporations shall also make to the Secretary of State, upon blanks furnished by him, reports as to the price charged the public for sewerage, gas,

water, light, power, and the price charged per passenger upon street railways, and if such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. [Acts 1925, S.B. 84.]

#### Art. 1444. Sworn Reports

All reports provided for in this subdivision shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent.

[Acts 1925, S.B. 84.]

#### Art. 1445. Registration

A true sworn copy of the reports required by this subdivision shall be filed annually on or before the first day of March with the Mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true sworn copy of said reports with the county clerk of the county in which such corporation has its principal place of business; and the same shall be by said clerk delivered to the commissioners court. Such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times.

[Acts 1925, S.B. 84.]

#### Art. 1446. Penalty

Any corporation which shall for thirty days willfully fail or refuse to file such reports in the manner provided by this subdivision shall forfeit and pay to the State one hundred dollars for each day during which it shall continue in default; which shall be recovered by suit by the Attorney General.

[Acts 1925, S.B. 84.]

### 8. MISCELLANEOUS PROVISIONS

#### Art. 1446a. Disruption of Gas, Electric or Water Service by Picketing, Threats or Intimidation

##### Policy and Purpose

Sec. 1. It is hereby declared the policy of this state that continuous service by public utilities furnishing electric energy, natural or artificial gas, or water to the public is absolutely essential to the life, health and safety of all of the people, and that the wilful interruption or stoppage of such services by any person or group of persons is a public calamity which cannot be endured. "Utilities" as herein defined are dedicated to the service of the public, and the primary duty of such a utility, its management and employees, is the maintenance of continuous and adequate service at all times in order that the safety and health of the people may be protected against the danger inherent in the disruption or cessation of such service. All courts and all administrative agencies of this state are enjoined to recognize this policy and in particular, to interpret and to apply this Act in accordance with such policy.

## Definitions

Sec. 2. When used in this Act, the term "public utility" or "utility" shall mean and include the following:

(a) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of generating, transmitting or distributing electric energy to the public; or

(b) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of producing, transmitting, or distributing natural or artificial gas to the public; or

(c) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of furnishing water to the public; or

(d) Any state agency, authority, subdivision or municipality engaged in the business of furnishing any of the above described services to the public.

## Unlawful Picketing, Threats or Intimidation

Sec. 3. It shall be unlawful for any person or persons to picket the plant, premises or any part of the property of a public utility, as defined herein, with the intent to disrupt the service of such utility or to prevent the maintenance thereof, or if such picketing has the effect of disrupting the service or preventing the maintenance thereof. It shall be unlawful for any person or persons to intimidate, threaten or harass any employee of such utility with the intention of disrupting its service or preventing the maintenance thereof, or if such intimidation, threats or harassment has the effect of disrupting the service of such utility, or preventing the maintenance thereof.

## Restraining Order; Venue

Sec. 4. When any utility, as defined herein, shall present a verified petition to the Judge of any District Court, alleging that within such judicial district a person or persons are violating the provisions of Section 3 of this Act, or are threatening to violate said provisions, and that such violation or threatened violation will prevent or interfere with the maintenance of adequate water service or electric or gas service, and describes the acts done or committed which are in violation of said Section 3, or the threatened acts which, if committed, will violate the provisions thereof, it shall be the duty of the Judge to forthwith inquire into the matter, and if it appears that the provisions of Section 3 are being violated, or that there is a threat to violate said provisions, he shall immediately issue an order restraining such person or persons, their agents, and all parties acting with them from committing any acts or doing any of the things prohibited by the provisions of Section 3 hereof, said restraining order to become effective when the plaintiff shall have

filed with the clerk of said court a good and sufficient bond to cover such court costs as may reasonably accrue in connection with the case, the amount of which cost bond shall be fixed by the court. The cause shall be docketed and tried as in the case of other suits for writs of injunction, except that no judgment rendered therein shall be superseded pending appeal. The venue of suits of this character shall be in any District Court in any judicial district in which the violation or threat to violate the provisions of Section 3 hereof may occur, and the various District Judges shall have full authority to enforce all orders and writs of injunction issued to protect the life, health and safety of the public.

## Sabotage; Penalty

Sec. 5. Any person who shall wilfully damage or destroy any building, equipment, machinery or facility used in furnishing utility service by any utility as defined in Section 2 hereof, or who interferes with, or commits any act of sabotage affecting any machinery, equipment, or facilities of any such utility for the purpose of disrupting the service provided by such utility, or for the purpose of preventing the maintenance of such service, shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the state penitentiary for not less than two (2) years, nor more than five (5) years.

The word "sabotage" as used in this Act shall be construed to include any intentional tampering with, obstructing, breaking, damaging, changing or in any way interfering with any building, machinery, structure, wires, poles, towers, pumps, pipe lines, meters, switches, transformers, or any other equipment or property of any sort used by a utility as defined herein in furnishing water, gas, or electric service.

## Conspiracy; Penalty

Sec. 5-a. If any two or more persons shall enter into any agreement, compact, or plan to violate any of the provisions of Section 5 of this Act, or any agreement, compact, or plan to persuade, induce or employ some person to violate the provisions of said section, every person participating in such agreement, compact or plan shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the state penitentiary for not less than two (2) nor more than five (5) years. In order that such offense be complete, it shall not be necessary that an overt act be committed pursuant to such agreement, compact or plan. The provisions of this section shall be cumulative of other statutes relating to conspiracy.

## Enforcement by Executive Department

Sec. 6. In accordance with the declared policy of this state, as set out in Section 1 hereof, it shall be the duty of the Governor, and of the Executive Department under his direction, to exercise all of the powers available under the constitution and laws of the state to protect the public from the dangers incident to stoppage or interruption in water, elec-

tric or gas utility service in any place in Texas, because of a violation of any of the provisions of this Act.

**Rights of Employees**

Sec. 7. Nothing in this Act shall be construed as a limitation upon the right of any employee of a public utility to quit work and to leave the premises of his employer at any time he chooses so to do, or to refuse to report for work when he so desires.

**Severability**

Sec. 8. If any section, subsection, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional or inoperative, such holding shall not affect the validity of the remaining portions of the Act; but the remainder of the Act shall be given effect as if such invalid, unconstitutional or inoperative portion had not been included, and the Legislature hereby declares that it would have passed the remainder of the Act regardless of the inclusion or exclusion of such portion.

[Acts 1947, 50th Leg., p. 142, ch. 84.]

**Art. 1446b. Fraudulently Obtaining Telecommunications Services**

Sec. 1. In this Act:

(1) "Telecommunications service" means the transmission of a message or other information by a public utility, including a telephone or telegraph company.

(2) "Publish" means the communication or dissemination of information to another by any means.

Sec. 2. (a) A person commits an offense if he:

(1) publishes an existing, cancelled, revoked, or nonexistent telephone number, a credit number or other credit device, or a method of numbering or coding that is used in the issuance of telephone numbers or credit numbers or other credit devices knowing that other persons will use the published information to avoid payment of a charge for telecommunication service;

(2) makes or possesses any equipment specifically designed to be used to fraudulently avoid charges for telecommunications services.

(b) A violation of this section is a misdemeanor punishable by a fine of not more than \$500, by imprisonment in jail for not more than sixty days, or by both, unless the person has been previously convicted of a violation of this section, in which event it is a felony punishable by a fine of not more than \$5,000, by imprisonment in the penitentiary for not less than two years or more than five years, or by both.

Sec. 3. Equipment described in Subdivision (2), Subsection (a), Section 2, may be seized by a peace officer under warrant or incident to a lawful arrest.

On conviction of the person who possessed the equipment of a violation of this Act, the court shall order the sheriff to destroy the equipment.

Sec. 4. The provisions of this Act do not apply to an employee of a public utility that provides telecommunications service while acting in the course of his employment.

[Acts 1973, 63rd Leg., p. 880, ch. 397, eff. June 13, 1973.]

**9. TRADE ZONES**

**Art. 1446.1. Laredo Trade Zone Corporation**

The Laredo Trade Zone Corporation, organized and incorporated under the laws of the State of Texas, with offices at San Antonio, Bexar County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the Laredo Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board. [Acts 1965, 59th Leg., p. 236, ch. 102, eff. April 27, 1965.]

**Art. 1446.2. McAllen Trade Zone Corporation**

The McAllen Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at McAllen, Hidalgo County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the McAllen Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1965, 59th Leg., p. 528, ch. 272, eff. May 28, 1965.]

**Art. 1446.3. Harlingen Trade Zone Corporation**

The Harlingen Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Harlingen, Cameron County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone adjacent to any port of entry in Cameron County, Texas, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1965, 59th Leg., p. 741, ch. 347, eff. June 9, 1965.]

**Art. 1446.4. San Angelo Trade Zone Corporation**

Sec. 1. The San Angelo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at San Angelo, Tom Green County, Texas, is authorized to establish, operate and maintain a foreign trade zone at San Angelo, Tom Green County, Texas, and other sub-zones.

Sec. 2. The San Angelo Trade Zone, Inc., is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the San Angelo Port of Entry, and other sub-zones, subject to the requirements of Public Law No. 397, as amended by Public Law 566, 81st Congress (Ch. 1A, Title 19, Sections 81a-81u, United States Code

Annotated), and regulations of the Foreign Trade Zones Board.  
[Acts 1967, 60th Leg., p. 2075, ch. 777, eff. June 18, 1967.]

## CHAPTER ELEVEN. ROADS

Article

1447. Charter.

### TOLL ROADS

- 1448. Toll Road: Incorporation.
- 1449. Charter.
- 1450. Examination.
- 1451. Registration.
- 1452. Duration.
- 1453. Charter Amendments.
- 1454. Powers.
- 1455. Use of State Lands.
- 1456. Private Lands.
- 1457. Road Construction.
- 1458. Railroad Crossings.
- 1459. Public Way Crossings.
- 1460. Openings.
- 1461. Culverts, Etc.
- 1462. Obstruction of Streams.
- 1463. Eminent Domain.
- 1464. Rules and Rates.
- 1465. Use of Road.

#### Art. 1447. Charter

The charter of a road company, in addition to the information required by article 1304,<sup>1</sup> shall state: First, the kind of road intended to be constructed: Second, the places from and to which the road is intended to be run: Third, the counties through which it is intended to be run: Fourth, the estimated length of the road.

[Acts 1925, S.B. 84.]

<sup>1</sup> Repealed; see, now, art. 1396-3.02.

### TOLL ROADS

#### Art. 1448. Toll Road: Incorporation

Any number of persons, not less than five, being subscribers to the stock, may organize themselves into a corporation for the purpose of constructing, building, acquiring, owning, operating and maintaining toll roads within this State by complying with the requirements of this subdivision. No corporation, except one chartered under the laws of this State, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any toll road within this State.

[Acts 1925, S.B. 84.]

#### Art. 1449. Charter

The persons proposing to form a toll road corporation shall adopt and sign articles of incorporation, which shall contain, in addition to the general requirements, the following:

1. The terminal points, and the intermediate counties through which it is intended to construct the toll road;
2. The names and places of residence of the several persons forming the association for incorporation; and

3. In what officers the management and control of the corporation shall be vested.

[Acts 1925, S.B. 84.]

#### Art. 1450. Examination

The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, who shall carefully examine the same; and, if he finds them to be in accordance with the provisions of this subdivision, and not in conflict with the laws of the United States or of this State, he shall attach thereto a certificate to that effect.

[Acts 1925, S.B. 84.]

#### Art. 1451. Registration

When said articles have been examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by the affidavit of at least three of the directors named in such articles. Such affidavit shall state that the entire amount of the capital stock of such proposed corporation has been in good faith subscribed, and that fifty per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such affidavit and articles to be recorded in his office, and shall attach a certificate of the fact of such record to said articles, and return the same to such corporation.

[Acts 1925, S.B. 84.]

#### Art. 1452. Duration

No toll road corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, for periods not longer than fifty years, in the manner provided for the renewal of railroad corporations.

[Acts 1925, S.B. 84.]

#### Art. 1453. Charter Amendments

Any toll road corporation may amend or change its articles of incorporation in the manner provided by law for railroad corporations.

[Acts 1925, S.B. 84.]

#### Art. 1454. Powers

Every toll road corporation organized hereunder shall have the right to construct, build, acquire, own, operate and maintain toll roads between any points within this State.

[Acts 1925, S.B. 84.]

#### Art. 1455. Use of State Lands

Every such corporation shall have the right of way for its line of road through and over any land belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

[Acts 1925, S.B. 84.]

**Art. 1456. Private Lands**

Every toll road corporation shall have the right to cause such examination and survey for its proposed road to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. [Acts 1925, S.B. 84.]

**Art. 1457. Road Construction**

Every such corporation shall have the right to lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of its road, and to cut down any standing trees that may be in danger of falling upon or obstructing such road, making compensation in the manner provided by law. [Acts 1925, S.B. 84.]

**Art. 1458. Railroad Crossings**

Every such corporation shall have the right to construct its road across any railroad, street railroad or interurban line within this State, which it may intersect or touch; provided that it shall properly fence such crossings, and restore, in other respects, the property thus intercepted or crossed, to its former state. [Acts 1925, S.B. 84.]

**Art. 1459. Public Way Crossings**

Every such corporation shall have the right to construct its own road across any stream of water, water course, street, highway, plank road, turnpike or canal, which the route of said road shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossings in repair. [Acts 1925, S.B. 84.]

**Art. 1460. Openings**

Every such corporation which may fence its right of way, may be required to make openings or crossings through its fence and over its roadbed every five miles thereof, in the manner provided by law with reference to railroad corporations. [Acts 1925, S.B. 84.]

**Art. 1461. Culverts, Etc.**

In no case shall any toll road corporation construct its road without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. [Acts 1925, S.B. 84.]

**Art. 1462. Obstruction of Streams**

Nothing in this chapter shall be construed to authorize the erection of any bridge or any other obstruction across or over any stream of water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream of water. [Acts 1925, S.B. 84.]

**Art. 1463. Eminent Domain**

Every toll road corporation shall have and enjoy all of the rights, privileges and immunities conferred by and be subject to each provision of the law relating to the exercise of the right of eminent domain. [Acts 1925, S.B. 84.]

**Art. 1464. Rules and Rates**

Every toll road corporation shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and that the rate to be charged for each class of vehicle shall be the same to all in each of such classes. [Acts 1925, S.B. 84.]

**Art. 1465. Use of Road**

No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefor, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation. [Acts 1925, S.B. 84.]

**CHAPTER TWELVE. BRIDGES, FERRIES AND CAUSEWAYS**

**1. CAUSEWAYS**

- Article
- 1466. Authority to Build.
- 1467. Statement of Location.
- 1468. Priority.
- 1469. Condemnation of Approaches.
- 1470. Land Under Water.
- 1471. Lease of Right of Way.
- 1472. Lessee May Issue Bonds.
- 1473. Causeway Corporations.

**2. BRIDGES AND FERRIES**

- 1474. Bridge Charter.
- 1475. Rights of Corporation.
- 1476. Toll Rate.
- 1477. Owner's Liability.

## 1. CAUSEWAYS

### Art. 1466. Authority to Build

Any person, corporation or association of persons, hereinafter called the owner, may purchase, build, construct, own, maintain and operate a combination bridge, dam, dike, causeway and roadway across any arm of the Gulf of Mexico or inlet thereof, or any of the saltwater bays, wholly within the limits of this State, to provide a causeway, roadway or highway for vehicles, teams, pedestrians, railroads, and for every character of inland transportation.  
[Acts 1925, S.B. 84.]

### Art. 1467. Statement of Location

Within ninety days after the commencement of construction of such structure, said owner shall file for record with the clerk of the county where the greater part of such structure is situated, a sworn statement showing the location of said proposed structure, the name of the same, the size of the same, the name of the stream, bay or arm of the gulf or inlet thereof, or salt water bay over which it is to be built, the time when the work was commenced and the name of the owner, together with a map showing the location of said structure.  
[Acts 1925, S.B. 84.]

### Art. 1468. Priority

The claimant's right to build said structure will relate back to the time of so filing said statement and map, and the first in time shall be the first in right. The filing of said statement and map shall be considered as taking "formal action."  
[Acts 1925, S.B. 84.]

### Art. 1469. Condemnation of Approaches

Said claimant may acquire by purchase or by the exercise of the right of eminent domain, all necessary approaches to said structure that said claimant deems necessary.  
[Acts 1925, S.B. 84.]

### Art. 1470. Land Under Water

The land under water to be occupied by such structure and approaches thereto is hereby granted absolutely to said claimant, and five hundred feet more on each side of such structure is also granted with the right only to dredge therefrom or beyond same for material for causeways if required in construction and maintenance.  
[Acts 1925, S.B. 84.]

### Art. 1471. Lease of Right of Way

Such owner may lease the right of way over said structure to cities and towns for public utilities owned and operated by them, and to corporations for the constructions by such corporations of railroad tracks over which steam and electric trains and cars may be operated for the transportation of freight and passengers; such right not to be granted in such way as to obstruct or interfere with the use of such

structure for pedestrians, teams and vehicles, or to permit a monopoly. Said lease to railroad corporations shall be for such time and on such terms and conditions as the Railroad Commission of Texas may prescribe. Said railroad companies shall only charge for the use of said tracks as a part of the mileage according to statutory rates and the general laws of Texas.

[Acts 1925, S.B. 84.]

### Art. 1472. Lessee May Issue Bonds

Any corporation so contracting for the right of way over any part of said structure shall have the right to make and enter into any contract with said owner subject to the approval of the Railroad Commission, for the payment to said owner of all sums of money due thereunder, and for this purpose may issue and sell its bonds to the extent of the amount of such corporation's obligations to the said owner. No such bonds shall be issued by any railroad company or other corporation without first obtaining the permission, order and approval of the Railroad Commission.

[Acts 1925, S.B. 84.]

### Art. 1473. Causeway Corporations

Corporations may be formed and chartered under the provisions of this law and of this title for the purposes stated in article 1466 hereof. All such corporations shall have full power and authority to make contracts with other persons or corporations conveying to said persons or corporations the right of easement or user of any portion of any such structure, and shall have full power and authority to charge, demand and receive reasonable and just tolls and charges for the use of said portions of said bridge, causeway or roadway, and the same shall be equal, just and uniform to all persons, corporations, cities and towns as herein provided, without discrimination as to the amount charged or delay in handling same. Any such corporation shall be subject to the regulation and control of the Railroad Commission as to all the powers and provisions of this law.  
[Acts 1925, S.B. 84.]

## 2. BRIDGES AND FERRIES

### Art. 1474. Bridge Charter

The charter of a bridge or ferry company, in addition to the general information required by law, shall state the stream intended to be crossed by the bridge or ferry.

[Acts 1925, S.B. 84.]

### Art. 1475. Rights of Corporation

Whenever any person shall file with the Secretary of State any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry, to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and

three miles below said bridge or ferry. This article shall not be construed to prohibit bridges and ferries at the crossings of any road on such stream within such limits, declared, either before or after the erection of such bridge or ferry, to be a public road by the commissioners court of the county in which such crossing is situated.

[Acts 1925, S.B. 84.]

**Art. 1476. Toll Rate**

All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries.

[Acts 1925, S.B. 84.]

**Art. 1477. Owner's Liability**

All persons or corporate companies owning any toll bridge or ferry shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry boat, which damages may be recovered by suit therefor.

[Acts 1925, S.B. 84.]

**CHAPTER THIRTEEN. CHANNEL AND DOCK [Repealed]**

Arts. 1478 to 1482. Repealed by Acts 1961, 57th Leg., p. 841, ch. 377, § 14, eff. Aug. 28, 1961

**CHAPTER FOURTEEN. DEEP WATER [Repealed]**

Arts. 1483 to 1494. Repealed by Acts 1961, 57th Leg., p. 841, ch. 377, § 14, eff. Aug. 28, 1961

**CHAPTER FIFTEEN. OIL, GAS, SALT, ETC. [Repealed]**

Arts. 1495 to 1507. Repealed by Acts 1955, 54th Leg., p. 239, ch. 64, art. 9.16

**CHAPTER SIXTEEN. WASTE WATER CORPORATIONS**

Article

- 1508. Purposes.
- 1509. Powers.
- 1510. Condemnation.
- 1511. Services.
- 1512. Ownership of Stock.

**Art. 1508. Purposes**

Corporations may be created for the purpose of gathering, storing, and impounding water containing salt or other substances [produced] in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation.

[Acts 1925, S.B. 84.]

**Art. 1509. Powers**

Such corporations, in addition to the general powers conferred by law upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water and for the protection of such reservoirs from inflow or damage by surface waters.

[Acts 1925, S.B. 84.]

**Art. 1510. Condemnation**

Such corporation shall have power to condemn lands and rights necessary for the purposes of such corporation; and also to cross with their ditches, canals, and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings. No right is conferred to pass through any cemetery or under any residence, school house or other public building, nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof.

[Acts 1925, S.B. 84.]

**Art. 1511. Services**

In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters, in proportion to the needs of such producers at fair and reasonable charges, and without discrimination between such producers under like conditions.

[Acts 1925, S.B. 84.]

**Art. 1512. Ownership of Stock**

Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder.

[Acts 1925, S.B. 84.]

**CHAPTER SEVENTEEN. TRUST COMPANIES AND INVESTMENTS**

Article

- 1513. Trust Companies.
- 1513a. Creation of Trust Company; Purposes.

**AGRICULTURAL FINANCE CORPORATIONS**

- 1514. Purposes.
- 1515. "Agricultural Products."
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**LOAN AND BROKERAGE COMPANIES**

- 1520 to 1524a-1. Repealed.
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## Article

1524i. Loans from Reconstruction Finance Corporation.

1524j. Anti-trust Laws not Affected.

1524k. Restraining Violation of Orders, Rules or Regulations; Punishment for Violation of Injunction.

**Art. 1513. Trust Companies**

Every trust company organized under the laws of the State with a capital of not less than five hundred thousand dollars shall, in addition to all other powers conferred by law, have the power to purchase, sell, discount and negotiate with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, stocks, bonds, securities, including the obligations of the United States or of any States thereof; to issue debentures, bonds and promissory notes, to accept bills or drafts drawn upon it, but in no event having liabilities outstanding thereon at any one time exceeding five times its capital stock and surplus; provided, however, that with the consent in writing of the Banking Commissioner they may have outstanding at any one time ten times the capital stock and surplus; and generally, to exercise such powers as are incidental to the powers conferred by this article.

[Acts 1925, S.B. 84.]

**Art. 1513a. Creation of Trust Company; Purposes**

## Creation; Purposes

Sec. 1. Trust companies may be created, and any corporation, however created, may amend its charter in compliance herewith, or a foreign corporation may obtain a certificate of authority to do business in Texas for the following purpose: to act as trustee, executor, administrator, or guardian when designated by any person, corporation, or court to do so, and as agent for the performance of any lawful act, including the right to receive deposits made by agencies of the United States of America for the authorized account of any individual, and to act as attorney-in-fact for reciprocal or inter-insurance exchange, and to lend and accumulate money without banking privileges, when licensed under the provisions of Subtitle II of Title 79, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup>

Supervision of Banking Commissioner; Annual Statement; Examination of Trust Companies; Penalties

Sec. 2. (a) Such corporations shall be subject to supervision by the Banking Commissioner of Texas and shall file with the Banking Commissioner of Texas on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities, together with a fee of \$25 for filing; which statement when so filed shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. The Banking Commissioner may, for good cause shown,

extend the time for filing such statement for not more than 60 days. The Banking Commissioner, or his authorized assistants or representative, shall not make public the contents of said statement, or any information derived therefrom, except in the course of some judicial proceeding in this state.

(b) The Banking Commissioner of Texas shall have authority to examine or cause to be examined each such corporation annually or more often if he deems it necessary. Such corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination and a fee not exceeding \$25 per day per person engaged in such examination. If such corporation has not sold in Texas, and does not offer for sale or sell in Texas, any of its securities which have been registered or with respect to which a permit authorizing their sale has been issued under the Securities Act, as presently in force or hereafter amended, the Banking Commissioner of Texas, in lieu of an examination, shall accept the financial statement filed by such corporation pursuant to the first paragraph of this Section. Such fees, together with all other fees, penalties and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

(c) If any such corporation shall fail to comply with the requirements of the first paragraph of this Section in the manner and within the time required, such failure shall subject such corporation to a penalty of not less than \$200 nor more than \$1,000, which shall be collected at the suit of the Attorney General if not paid within 30 days after February 1 of each year. A second failure to file such statement, as so required, shall be grounds for forfeiture of the charter of such corporation at the suit of the Attorney General upon request of the Banking Commissioner of Texas.

(d) Refusal on the part of any such corporation to submit to an examination by the Banking Commissioner of Texas, or his representatives, or the withholding of information from the Banking Commissioner of Texas, or his representatives, shall constitute grounds for forfeiture of the charter of such corporation at the suit of the Attorney General upon the request of the Banking Commissioner of Texas.

## Compliance with Securities Act

Sec. 3. Any securities issued or sold by such companies shall be issued and sold in compliance with all of the provisions of the Securities Act, as amended, as it now exists or may hereafter be amended.

## Paid-in Capital

Sec. 4. Any such company must have a fully paid-in capital of not less than \$500,000.

## Demand or Time Deposits

Sec. 5. Any such company shall not accept demand or time deposits, except as hereinabove provided.

## Foreign Corporations

Sec. 6. The provisions of this Act shall apply to foreign corporations which have heretofore been authorized and which may hereafter be authorized to transact business in this state under a certificate of authority which authorizes such corporation to exercise in this state all or any of the purposes, powers or authorities referred to in Section 1 hereof. Every such foreign corporation authorized to transact business in the state shall be subject to the examination of the Banking Commissioner of Texas in the same manner and under the same terms and conditions as are domestic corporations. In lieu of such examinations, the Banking Commissioner of Texas may, in his discretion, accept reports of examination made by the supervising authority of the state in which the home office of such foreign corporation is domiciled. Failure to comply with this Act shall constitute grounds for revocation of the certificate of authority of such foreign corporation to transact business in this state in an action filed by the Attorney General upon the request of the Banking Commissioner of Texas.

## Supplementary Laws; Antitrust Laws

Sec. 7. The General Laws for incorporation and governing of corporations and the provisions of Article 1513, Revised Civil Statutes of Texas, 1925, and the provisions of the Texas Business Corporation Act shall supplement the provisions of this Act and shall apply to such trust companies to the extent that they are not inconsistent herewith; provided, the provisions of Article 2.01A permitting a corporation to have more than one purpose shall not apply. The power and authority herein conferred shall in no way affect any of the provisions of the antitrust laws of this state.

[Acts 1957, 55th Leg., p. 1162, ch. 388; Acts 1967, 60th Leg., p. 1730, ch. 658, § 1, eff. June 17, 1967.]

<sup>1</sup> See article 5069-1.01 et seq.

Sections 2 and 3 of the 1967 amendatory act provided:

"Sec. 2. Chapter 165, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 1524a, Vernon's Texas Civil Statutes), is repealed.

"Sec. 3. If any word, phrase, clause, sentence or Section of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

## AGRICULTURAL FINANCE CORPORATIONS

## Art. 1514. Purposes

This subdivision embraces private corporations formed for the purpose of dealing in acceptances and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products; and for dealing in acceptances of banking corporations not secured upon nor representing any such products.

[Acts 1925, S.B. 84.]

## Art. 1515. "Agricultural Products"

By ready marketable, staple, non-perishable agricultural products are meant those classes of agricul-

tural products which are subject to such constant dealing in ready markets as to make their values easily and definitely ascertainable and realizable on short notice, and which are not ordinarily subject to substantial depreciation in quality within the period of immaturity of the obligations which they secure, or by which they are represented.

[Acts 1925, S.B. 84.]

## Art. 1516. Assets and Liabilities

The total liabilities to any corporation chartered under this law of any such banking corporation, on account of any such unsecured acceptances, shall at no time be permitted to exceed ten per cent of the unimpaired capital of such corporation. Each such corporation shall invest and keep invested in obligations of the United States, Texas, or political subdivisions or incorporated cities of Texas, not less than one-half of its paid in capital. Such corporation shall have an unauthorized<sup>1</sup> capital stock of not less than five hundred thousand dollars which shall not be reduced by amendment to less than such sum.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Probably should read "authorized."

## Art. 1517. Limit of Indebtedness

No such corporation shall enter into any contract or contracts of acceptances, guaranty, indorsement or suretyship when its obligation thereon in connection with its entire existing obligations and indebtedness primary or secondary, fixed or contingent, shall exceed five times its then unimpaired capital and surplus, unless previously authorized in writing by the Banking Commissioner so to do, in which case it may enter into such contract not to exceed the limit so fixed by such Commissioner, in no case to exceed ten times its said capital and surplus. Those obligations, to pay which at maturity, any such corporation has been furnished funds by other parties liable thereon, need not be considered in determining the amount of its existing obligations and indebtedness hereunder. All such contracts and obligations entered into in violation of this article shall be unenforceable against such corporation. Nothing herein shall prevent the enforcement of any such prohibited obligations by any holder who has acquired the same in due course, for value, before maturity, and without notice of its infirmity.

[Acts 1925, S.B. 84.]

## Art. 1518. Ownership of Stock

Any private corporation formed under this title, and any banking corporation or trust company, except savings banks, may hold stock in corporations created hereunder, and in corporations chartered under the laws of the United States or in any State thereof, and principally engaged in financing domestic or foreign trade in any such agricultural products, in amounts not to exceed in the aggregate, ten per cent of the capital and surplus of such private corporation, banking or trust company, nor to exceed ten per cent of the capital stock of such corporation in which such stock is to be held. No banking

corporation or trust company shall acquire stock in such corporation without express written authorization therefor from the Banking Commissioner, under such rules and regulations as he may provide, except in payment of debt. If it shall acquire same in payment of debt, it shall promptly dispose of same unless expressly permitted to retain same by such commissioner.

[Acts 1925, S.B. 84.]

#### Art. 1519. Regulation

Such corporations shall be subject at all times to the supervision and control of the Banking Commissioner, and shall conform to all lawful regulations of such Commissioner. No such corporation shall begin business until authorized to do so by such Commissioner after satisfactory showing made that such corporation has complied with the law, and thereafter it shall make reports to such Commissioner and be subject to such periodical visitations and examinations under his direction, and shall pay fees therefor, all as in the case of State banking corporations. Said Commissioner shall have such powers with reference to taking charge of such corporations, liquidating same, and for like causes as are possessed by him with reference to State banks.

[Acts 1925, S.B. 84.]

### LOAN AND BROKERAGE COMPANIES

**Arts. 1520 to 1524. Repealed by Acts 1931, 42nd Leg., p. 280, ch. 165, § 11**

**Art. 1524a. Repealed by Acts 1967, 60th Leg., p. 1730, ch. 658, § 2, eff. June 17, 1967**

See, now, article 1513a and notes thereunder.

**Art. 1524a-1. Repealed by Acts 1963, 58th Leg., p. 550, ch. 205, § 30, eff. Aug. 23, 1963**

See, now, article 5069-3.01 et seq.

#### Art. 1524b. Housing Corporations Authorized

Corporations may be formed wholly for the purpose of providing housing for families of low income and/or for reconstruction of slum areas, provided such corporations are regulated by state or municipal law, as hereinafter provided as to rents, charges, capital structure, rate of return and areas and methods of operation.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 1.]

#### Art. 1524c. Application for Incorporation

Applications for charters for corporations, the creation of which are authorized under the provisions of this Act, in addition to requirements now prescribed by law, must be accompanied by a certificate executed by the officials of the governing body of the municipality in which said corporation contemplate owning or operating any properties certifying that the capital structure thereof and the plans and specifications of the proposed building has the approval of such governing body, provided, that where said corporation contemplates the owning or operating of properties situated outside the corporate limits of

any organized town, city or village, then the certification herein referred to shall be executed by the Commissioners' Court of any county in which it is contemplated to own and/or operate properties within the scope of this Act. Such certificate shall not be binding upon the Secretary of State who shall proceed to file or refuse to file the charter in accordance with the provisions of existing laws.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 2.]

#### Art. 1524d. Powers; Fees and Taxes

Any corporation organized under the provisions of this Act shall have, except as herein provided, all the powers of private domestic corporations which have been heretofore organized under the provisions of the laws of the State of Texas, and shall pay all fees and taxes which are required to be paid by private domestic corporations organized and/or existing under the laws of the State of Texas.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 3.]

#### Art. 1524e. Regulation by Municipalities or Counties

The rents, charges, capital structure, rate of return and areas and method of operation of any corporation organized under the provisions of Section 1 hereof shall be regulated, as hereinafter provided, by the governing body of any municipality or county where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which said corporation owns and operates any property. Should any such corporation own and operate properties in more than one municipality, the governing body of each municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which property of the corporation is situated, shall regulate in the manner prescribed by this Act the rents, charges, rate of return and area and method of operation of the property located within the territorial limits of such municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village, provided the governing body of a county shall not have the jurisdiction of regulation of property of such corporation situated within the corporate limits of a town, village, or city.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 4.]

#### Art. 1524f. Rate of Return Restricted

The governing body fixing the rate of return for a corporation organized under the provisions of Section 1 of this Act shall not fix such rates of return to yield a net amount in excess of eight (8%) per cent upon the invested capital of such corporation.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 5.]

#### Art. 1524g. Rules and Regulations to be Prescribed and Plans Approved

Such governing body may establish rules and regulations governing its procedure for hearings in fix-

ing or amending orders or ordinances fixing the rents, charges, rate of return and areas and methods of corporations organized under the provisions of Section 1 hereof, and before any building is erected by such corporation, the detailed plans and specifications thereof, must be approved by the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which such building is to be erected.  
[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 6.]

**Art. 1524h. Appeal from Order Fixing Rate of Return**

Any corporation organized and existing under and by virtue of provisions of Section 1 hereof, which shall be dissatisfied with any rents, charges, rate of return and area and method of operation which is fixed or may be fixed or may be changed by any governing body, may, by giving to such governing body ten (10) days notice by registered mail of its intention thereof, appeal to any district court of the county wherein the property which is affected is situated. The appeal shall be perfected by filing suit in the district court of the county in which the property is situated within ten (10) days after the giving of such notice, and the filing of such suit shall suspend the order, rule, regulation, or ordinance from which the appeal is perfected. The municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village shall be defendant in said suit. The trial shall be de novo, and Court, upon a hearing, shall, by its judgment, regulate the rents, charges, rate of return, areas and method of operation of the corporation.  
[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 7.]

**Art. 1524i. Loans from Reconstruction Finance Corporation**

Any corporation created under the provisions of this Act, in addition to the powers herein granted, shall have full power and authority to do all things necessary to secure loans from the Reconstruction Finance Corporation under the rules and regulations prescribed by said Reconstruction Finance Corporation.  
[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 8.]

**Art. 1524j. Anti-trust Laws not Affected**

Provided that nothing in this Act shall in anywise affect or nullify the Anti-trust laws of this State.  
[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 9.]

**Art. 1524k. Restraining Violation of Orders, Rules or Regulations; Punishment for Violation of Injunction**

If any agent, servant, officer or employee of any corporation created under the provisions of this Act shall wilfully violate any order, rule, regulation or ordinance fixing rents, charges, rate of return, areas and method of operation, the District Court of the

County in which the property of such corporation is situated, upon application of the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village wherein the corporation owns property or upon application of any Labor Inspector employed by the State of Texas when authorized to so act by the Commissioner of Labor Statistics of the State of Texas, may issue during its term or in vacation a temporary writ of injunction restraining such agents, servants, officers or employees from any violation of such order, rule, regulation or ordinance and which temporary writ of injunction may be made permanent upon notice and hearing in the manner now provided by law. No bond shall be required before issuing any such temporary or permanent injunction and if any such injunction is violated by the agents, servants, officers or employees of said corporation, the Court, in addition to its power to punish for contempt, may order that the building of such corporation shall not be used or occupied for any period not to exceed one year but the Court shall permit said building to be occupied or used if the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety to be provided by the Court in the sum of not less than Five Hundred (\$500.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, payable to the Judge of said Court, conditioned that said corporation, its agents, servants, officers or employees will thereafter comply with the orders, rules, regulations or ordinances which have been or may be promulgated, fixing the rents, charges, or rate of return, areas and methods of operation of said corporation and that it will pay all fines and costs that may be assessed in contempt proceedings against its agents, servants, officers and employees for the violation of any writ of injunction existing, or which may thereafter be issued.  
[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 10.]

**CHAPTER EIGHTEEN. MISCELLANEOUS**

Article

- 1525. Drainage.
- 1526. Irrigation and Waterpower.
- 1527. International Trading Corporations.
- 1527a. International Commerce Development Corporation; Foreign Trade Zone.
- 1528. Ice Companies.
- 1528a. State Housing Law.
- 1528b. Electric Cooperative Corporation Act.
- 1528c. Telephone Cooperative Act.
- 1528d. Automobile Club Services Act.
- 1528e. Professional Corporations Act.
- 1528f. Professional Associations Act.
- 1528g. Business Development Corporations.
- 1528h. Dealing in Acceptances.

**Art. 1525. Drainage**

Corporations chartered for the purpose of constructing, maintaining and operating canals, drains

and ditches outside of the corporate limits of cities and towns in any county in Texas shall:

1. Have power for the purpose of drainage, to acquire lands for the purpose of its business or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property.

2. Alienate within fifteen years from the date of acquiring same all lands acquired by such corporations, subject to judicial forfeiture, except lands used for the construction, maintenance and operation of drains, ditches and laterals.

3. Have power to make contracts for the permanent drainage of any tract of land and the charges therefor, said charges to be subject to the control of the Legislature; and the rights therein shall be secured by a lien expressly given upon the lands, other than homesteads, benefited by said drain or canal.

4. Have the right to borrow money for the construction, maintenance and operation of its ditches, canals and laterals, and to issue bonds and mortgage its franchises to secure the payment of any debts contracted for the same.

5. Report to the commissioners court of the county wherein constructed, all drains and canals so constructed by such corporations, such report to be approved by said court.

[Acts 1925, S.B. 84.]

#### **Art. 1526. Irrigation and Waterpower**

Corporations organized to construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stockraising, shall have power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such land and other property. Such corporations may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year.

[Acts 1925, S.B. 84.]

#### **Art. 1527. International Trading Corporations**

Corporations created for the purpose of engaging in international trading and the purchase and sale of the products of the farm, ranch, orchard, mine and forest shall be empowered to pledge, borrow, hypothecate and receive in trust for the purpose of sale any and all products of the farm, ranch, and orchard, and shall be authorized to buy, sell and exchange raw products of the farm, ranch, orchard, mine and forest, and to take in payment therefor finished products of whatever kind and character that they may determine at a fair, equitable and just valuation. Such corporations shall have power to charter,

lease, construct or purchase necessary vessels, ships, docks, wharves, and warehouses for the conduct of their business; to pool products of the farm in the sale of same; to hypothecate or pledge the credit of such corporations for the products so received under contract for the necessary funds with which to market same; to borrow money as other business corporations and to lend the same upon products that they may be engaged in the sale of, either as owner, agent, consignee, or commission merchant. They shall have generally and specially all the rights, powers and privileges belonging to a corporation engaging in international trading. Such corporations shall have authority to receive in payment of capital stock, manufacturing establishments, and the stocks and bonds of same at a fair and just valuation, and to so receive the products of the farm, ranch and orchard. Whenever property is received in payment for capital stock, the Secretary of State shall appoint a board of appraisers who are familiar with the valuations of such property so taken in payment for capital stock to appraise same and furnish him with a sworn statement of the valuations of the property so taken in payment for capital stock. On receipt of same he shall approve, file and record the charter of such corporation. A majority of the stock shall in all instances be owned by citizens of the United States, and a majority of the officers and directors thereof shall in all instances be citizens of the United States and of this State. Nothing in this article shall prevent citizens of foreign countries from becoming stockholders in such corporations, but the control of such corporations shall never in any instance be vested in citizens of other countries than the United States. Violation of any provision herein as to the control of stock of such corporation shall be sufficient for the Secretary of State to cancel the charter of said corporation and same shall be placed in the hands of a receiver as provided by law.

[Acts 1925, S.B. 84.]

#### **Art. 1527a. International Commerce Development Corporation; Foreign Trade Zone**

The International Commerce Development Corporation, organized and incorporated under the laws of the State of Texas, with offices at Fort Worth, Tarrant County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the Fort Worth Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1969, 61st Leg., p. 581, ch. 196, § 1, eff. May 14, 1969.]

#### **Art. 1528. Ice Companies**

Corporations organized or chartered under the laws of this State for the manufacture of ice shall also be authorized to engage in and transact the business of buying, selling and refrigerating poultry and poultry products, and buying, selling, canning and refrigerating fruits, produce and dairy products.

[Acts 1925, S.B. 84.]

Art. 1528a. State Housing Law

Short Title

Sec. 1. This Act shall be known as the "State Housing Law."

State Agencies and Instrumentalities

Sec. 2. It is hereby declared that it is necessary in the public interest to make provision for housing for families of low income, and that, the providing of such housing being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit their rental or sale at prices which families of low income can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination.

State Housing Board

Sec. 3. There is hereby created a State Board of Housing of the State of Texas. The Texas Rehabilitation and Relief Commission is hereby designated as the State Housing Board of the State of Texas, and shall perform all duties imposed by the Legislature as hereinafter provided: and insofar as its responsibilities and duties have to do with the State Housing Law the Texas Rehabilitation and Relief Commission shall continue to exist as the State Housing Board until its duties and obligations shall have ceased to exist.

Definition

Sec. 4. Definition: The term board as used in this Act shall mean the Texas Rehabilitation and Relief Commission.

Conditions of Approval of Housing Projects by Board

Sec. 5. No housing project proposed by a limited dividend housing corporation incorporated under this Act shall be undertaken, and no building or other construction shall be placed under contract or started without the approval of the board. No housing project shall be approved by the board unless:

(a) It shall appear practicable to rent or sell the housing accommodations to be created at prices not exceeding those prescribed by the board. No such project shall be approved in contravention of any zoning or building ordinance in effect in the locality in which designated areas are located.

(b) There shall be submitted to the board a financial plan in such form and with such assurances as the board may prescribe to raise the actual cost of the lands and projected improve-

ments by subscriptions to or the sale of the stock, income debentures and mortgage bonds of such corporation. Whenever reference is made in this Act to cost of projects or of buildings and improvements in projects, such cost shall include charges for financing and supervision approved by the board and carrying charges during construction required in the project including interest on borrowed, and, where approved by the board, on invested capital.

(c) There shall be such plans of site development and buildings as show conformity to reasonable standards of health, sanitation, safety and provisions for light and air, accompanied by proper specifications and estimates of cost. Such plans and specifications shall not in any case fall below the requirements of the health, sanitation, safety and housing laws of the state and shall meet superior requirements if prescribed by local laws and ordinances.

(d) The corporation agrees to accept a designee of the board of housing as a member of the board of directors of said corporation.

(e) If required by the board, the corporation shall deposit all moneys received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the State of Texas and to perform trust functions, and such trustee shall receive such moneys and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements upon presentation of draft, check or order signed by a proper officer of the corporation and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation.

Investigation of Housing Companies

Sec. 6. The board shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this Act, and into the dealings, transactions or relationships of such companies with other persons. Any of the investigations provided for in this Act may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this Act, and to examine them in relation to any matter it has power to

investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the board or excused from attendance.

Powers of Board

Sec. 7. The board is hereby empowered to

(a) study housing conditions and needs throughout the state to determine in what areas congested and unsanitary housing conditions constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state,

(b) prepare programs for correcting such conditions,

(c) collect and distribute information relating to housing,

(d) investigate all matters affecting the cost of construction or production of dwellings,

(e) study means of securing economy in the construction and arrangement of buildings,

(f) recommend and approve the areas within which or adjacent to which the construction of housing projects by limited dividend housing companies may be undertaken, and

(g) cooperate with local housing officials and planning commissions or similar bodies in cities and other localities in developments of projects they at any time may have under consideration.

Consolidation of Projects

Sec. 8. The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project or the consolidation of any approved project with a proposed project. In any of these events, the consolidation project shall be treated as an original project, and an application shall be submitted as in the case of an original project and rents may be averaged throughout the consolidated or extended project. The board may likewise permit or decline to permit any limited dividend corporation to organize and operate more than one project or to take over any project heretofore approved by the board and to operate it independently of other projects of the corporation.

Supervision and Regulation of Operation of Housing Companies

Sec. 9. In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this Act the board may:

(a) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations.

(b) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board or by the terms of any

project approved by the board, or to refrain from doing any acts in violation thereof.

(c) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed.

(d) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof.

(e) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited.

(f) Require every such corporation to file with the board an annual report setting forth such information as the board may require verified by the oath of the President and General Manager or Receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the board. The board may further require specific answers to questions upon which the board may desire information and may also require such corporations to file periodic reports in the form covering the period and at the time prescribed by the board.

(g) From time to time make, amend and repeal rules and regulations for carrying into effect the provisions of this Act.

Maximum Rentals or Purchase Price

Sec. 10. The board shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be

(a) all fixed charges, and all operating and maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the board; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the board.

(b) A dividend not exceeding the maximum fixed by this act upon the stock of the corporation allotted to the project by the board.

(c) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock, and income debentures of the corporation to the extent permitted by this Act.

Letting, subletting or assignment of leases of apartments in such buildings or structures at greater rentals than prescribed by the order of the board are prohibited and all such leases will be void for all purposes.

#### Reorganization of Companies

Sec. 11. (1) Reorganization of limited dividend housing companies shall be subject to the supervision and control of the board and no such reorganization shall be had without the authorization of such board.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by the board which, in making its determination, shall not exceed the fair value of the property involved.

#### Actions by Board against Housing Companies

Sec. 12. Whenever the board shall be of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit to do anything required of it by law or by order of the board and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the District Court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said District Court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action

or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint or in such modified or other form as the court may determine will afford appropriate relief.

#### Acquisition of Property for Projects

Sec. 13. When the board shall have approved a project for the construction of housing accommodations presented to it by a limited dividend housing company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest or purchase or, in the case of limited dividend housing companies.

The board may expressly except from its certificate hereunder any part of the property proposed to be acquired as unnecessary to the plan. The approval by the board of the project shall be deemed in any proceeding to acquire land by appropriation as sufficient evidence of the necessity of the appropriation and a duly certified copy of the certificate of the board shall be conclusive evidence as to the matters lawfully certified therein in any appropriation proceeding.

#### Incorporation

Sec. 14. Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing in the office of the Secretary of State, articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the state, except as herein modified or changed.

(a) The purposes for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the board of housing.

(b) The shares of which the capital shall consist shall have a par value.

(c) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it, shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the state housing law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at the rate of six (6%) per centum per annum, and that any

surplus in excess of such amount if said company shall be dissolved, shall revert to the State of Texas.

(d) The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend housing companies, except where such provisions are in conflict therewith.

#### Dividend Rate

Sec. 15. No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six (6%) per centum per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years.

#### Stock and Bond Issues for Property or Money actually Received

Sec. 16. No limited dividend housing company incorporated under this act shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the board of housing and such valuation shall be used in computing actual or estimated cost.

#### Income Debenture Certificates

Sec. 17. The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than six (6%) per centum per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of housing for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor.

#### Limitation of Powers

Sec. 18. No limited dividend housing company incorporated shall under this Act:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purpose defined in this Act.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the board, provided, however, that leases conforming to the regulations and rules of the board and for actual occupancy by the lessees may be made without the consent of the board. Any conveyance, incumbrance, lease or sublease

made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six (6%) per centum per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the board.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, cooperative or community purposes, and when permitted by law the roof may be used for cooperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the board.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the board.

(11) Make any guaranty without the approval of the board.

#### Bonds and Mortgages subject to Board's Approval

Sec. 19. Any company formed under this act may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgage or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto, may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the board under this act. Provisions for the amortization of the bonded indebtedness of companies formed under this act shall be subject to the approval of the board.

## Surplus Earnings

Sec. 20. The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b) and (c) of Section 10 of this act shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen (15%) per centum of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends of interest, less any payment or distributions theretofore made other than by dividends provided in Section 15, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the State of Texas, or shall be disposed of in such other manner as the board may direct and the Governor may approve.

## Rentals Reduced after Payments of Charges

Sec. 21. If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in Section 10, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the board of housing shall deem such balance too small for the purposes, be applied to the reduction of rentals.

## Board as Party in Foreclosures

Sec. 22. (1) In any foreclosure action the board shall be made a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court shall be authorized to make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend housing corporation organized under this act, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this act.

(2) Notwithstanding the foregoing provision of this section, wherever it shall appear that a corpora-

tion, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage which is a lien upon any such property such corporation shall have all the remedies available to a mortgagee under the laws of the State of Texas, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public and no costs shall be awarded against it.

## Purchase of Property of Other Housing Corporations

Sec. 23. Before any limited dividend housing corporation incorporated under this act shall purchase the property of any other limited dividend housing corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this act, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this act.

## Notice to Board of Sales under Judgments

Sec. 24. In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties.

## Fees of Board

Sec. 25. The board may charge and collect for a limited dividend housing corporation, incorporated under this act, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of one per cent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the board, or any of its employees, in performance of their duties under this act an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in Section 10 of this act pursuant to rules to be established by the board.

## Partial Invalidity

Sec. 26. The provisions of this act shall be severable and if any of its provisions shall be held to be

unconstitutional the decision so holding shall not be construed to affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

Corporate Existence

Sec. 27. The corporate existence of any corporation authorized hereunder shall not extend beyond twenty-five years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the Incorporation Board, by approval of the State Board of Housing, should grant an extension for an additional period of time. [Acts 1933, 43rd Leg., p. 751, ch. 223.]

**Art. 1528b. Electric Cooperative Corporation Act**

Short Title

Sec. 1. This Act may be cited as the "Electric Cooperative Corporation Act."

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(1) "Corporation" means a corporation organized pursuant to the provisions of this Act;

(2) "Board" means a board of directors of a corporation organized under this Act;

(3) "Member" means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein;

(4) "Federal agency" includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter created;

(5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, Federal agency, State or political subdivision thereof or any body politic;

(6) "Acquire" means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition;

(7) "Obligations" include bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a corporation;

(8) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough, having a population in excess of fifteen hundred (1,500) inhabitants, and includes both the farm and non-farm population thereof.

Purpose

Sec. 3. Co-operative, non-profit, membership corporations heretofore or hereafter organized under

this Act are authorized to engage in rural electrification by any one or more of the following methods:

(1) The furnishing of electric energy to any person, for delivery to any dwelling, structure, apparatus or point of delivery which is located in a rural area, and which is not receiving central station service, notwithstanding the fact that such person may be receiving central station service at other points of delivery in a rural or nonrural area.

(2) If any area in which such corporation is furnishing electric service to its members is annexed by an incorporated city or town (whether rural or nonrural as defined in this Act) in which central station service is supplied by such city or town or by a public utility corporation, the co-operative corporation is authorized to continue to furnish electric energy to any dwelling, structure, apparatus or point of delivery to which the co-operative corporation was delivering electric energy on the date of such annexation and if any person desires electric service in such annexed area for any dwelling, structure, apparatus or point of delivery which was not being served by the co-operative corporation on the date the area became annexed and to which central station service is not available from the city or town or a public utility corporation, the co-operative corporation may thereafter furnish electric energy to such dwelling, structure, apparatus or point of delivery.

(3) The furnishing of electric energy to persons desiring such service in any incorporated or unincorporated city or town (rural or nonrural) served by such corporation, and in which no central station service was available at the time such corporation began furnishing electric energy to the citizens thereof.

(4) The furnishing of electric energy to persons in rural areas who are not receiving central station service.

(5) The words "central station service" as used in this Act refer to electric service provided by a municipally owned electric system or by a public utility corporation, as described in Article 1435, Vernon's Revised Statutes of Texas.

(6) Assisting in the wiring of the premises of persons in rural areas or the acquisition, supply or installation of electrical or plumbing equipment.

(7) The furnishing of electric energy, wiring facilities, electrical or plumbing equipment or service to any other corporation organized under this Act or to the members thereof.

Powers of Corporation

Sec. 4. Each corporation shall have power:

(1) To sue and be sued, complain and defend, in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy to its members only, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary, convenient, or useful;

(5) To assist its members only to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

(6) To furnish to other corporations organized under this Act, or to the members thereof, electric energy, wiring facilities, electrical and plumbing equipment, and services convenient or useful;

(7) To acquire, own, hold, use, exercise, and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights of way, and easements necessary, useful, or appropriate;

(8) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;

(9) To borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenues, or income;

(10) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;

(11) To have and exercise the power of eminent domain for the purpose and in the manner provided by the condemnation laws of this State for acquiring private property for public use, such right to be paramount except as to property of the State, or of any political subdivision thereof;

(12) To accept gifts or grants of money, services, or property, real or personal;

(13) To make any and all contracts necessary or convenient for the exercise of the powers granted in this Act;

(14) To fix, regulate, and collect rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation;

(15) To conduct its business, and have offices within or without this State;

(16) To elect or appoint officers, agents, and employees of the corporation, and to define their duties and fix their compensation;

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

(18) To do and perform, either for itself or its members, or for any other corporation organized under this Act, or for the members thereof, any and all acts and things, and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.

#### Incorporators

Sec. 5. Any three or more natural persons of the age of twenty-one (21) years or more, residents of this State, may act as incorporators of a corporation to be organized under this Act by executing articles of incorporation as hereinafter provided in this Act.

#### Articles of Incorporation

Sec. 6. (a) The articles of incorporation shall state:

(1) The name of the corporation, which name shall include the words "Electric Cooperative" and the word "Corporation," "Incorporated," "Inc.," "Association," or "Company" and the name shall be such as to distinguish it from any other corporation organized and existing under the laws of this State;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify;

(4) The number of directors, not less than three (3), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but if expressly so stated the determination of such matters may be reserved to the directors by the by-laws;

(8) Any provisions, not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the corporation.

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

Prohibition on use of words "Electric Cooperative"

Sec. 7. The words "Electric Cooperative" shall not be used in the corporate name of corporations organized under the laws of this State, or authorized to do business herein, other than those organized pursuant to the provisions of this Act.

Execution, Filing, and Recording of Articles of Incorporation

Sec. 8. When the incorporators of any corporation shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Act, said officer shall receive, file, and record the articles of incorporation of such corporation in his office, upon application and payment of all fees therefor, and give a certificate showing the recording of such articles and authority to do business thereunder. The articles shall thereupon be filed in the office of the Secretary of State, who shall record same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the articles, or of the record thereof, certified under the Great Seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the articles in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing.

Renewal of Articles of Incorporation

Sec. 9. Any corporation organized under this Act, whose articles of incorporation have expired by limitation, may revive such articles with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the time of the expiration of its said articles, by filing with the consent of a majority of its members, new articles of incorporation under the provisions of this Act, reciting therein such original privileges, immunities, and rights of property, and by filing therewith a certified copy of such original expired articles.

Organization Meeting

Sec. 10. After the issuance of the certificate of incorporation, an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting by-laws and electing officers and for the transaction of such other business as may properly come before the meeting. The incor-

porators calling the meeting shall give at least three (3) days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting but such notice may be waived in writing.

By-laws

Sec. 11. The power to make, alter, amend, or repeal the by-laws of the corporation shall be vested in the Board of Directors. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Qualification of Members

Sec. 12. All persons having any dwelling, structure, apparatus or point of delivery in rural areas (or in areas provided for in Subdivisions (1) to (4) of Section 3 of this Act) proposed to be served by a corporation who are not receiving central station service at such dwelling, structure, apparatus or point of delivery, shall be eligible to membership in a corporation with respect to such dwelling, structure, apparatus or point of delivery. No person other than the incorporators shall be, become, or remain a member of a corporation unless such person shall use or agree to use electric energy or, as the case may be, the facilities, supplies, equipment, and services furnished by the corporation at the dwelling, structure, apparatus or point of delivery on which the membership is based. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and service thereof.

Meetings of Members

Sec. 13. (a) Meetings of members may be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the principal office of the corporation in this State.

(b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, by the Board of Directors, or a majority thereof, by a petition signed by not less than one-tenth of all the members or by such other officers or persons as may be provided in the articles of incorporation or the by-laws.

Notice of Members' Meetings

Sec. 14. Written or printed notice stating the place, day, and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member of record enti-

tled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. Notice of meetings of members may be waived in writing.

#### Voting by Members

Sec. 15. Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members, but voting by proxy or by mail may be provided for in the by-laws.

#### Certificate of Membership

Sec. 16. When a member of a corporation has paid the membership fee in full, a certificate of membership shall be issued to such member. Memberships in the corporation and the certificates shall be non-transferable. The certificate of membership shall be surrendered to the corporation upon the resignation, expulsion, or death of the member. Except for debts lawfully contracted between him and the corporation, no member shall be liable for the debts of the corporation to an amount exceeding the sum remaining unpaid on his membership fee.

#### Quorum of Members

Sec. 17. Unless otherwise provided in the articles of incorporation, a majority of the members present, in person or represented by proxy, shall constitute a quorum for the transaction of business at a meeting of members, but if voting by mail is provided for in the by-laws, members so voting shall be counted as if present.

#### Board of Directors

Sec. 18. The business and affairs of a corporation shall be managed by a Board of Directors, not less than three (3) in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by this Act, by the articles of incorporation or by the by-laws of the corporation. The by-laws may prescribe qualifications for directors.

#### Election, Qualification, and Compensation of Directors

Sec. 19. The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the by-laws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as may be provided in the by-laws.

#### Vacancies

Sec. 20. Any vacancy occurring in the Board and any directorship to be filled, shall be filled as provided in the by-laws by persons who shall serve until directors may be regularly elected as provided for in this Act.

#### Quorum of Directors

Sec. 21. A majority of the Board shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors, present at a meeting at which a quorum is present, shall be the act of the Board, unless the act of a greater number is required by the articles of incorporation or the by-laws.

#### Directors' Meetings

Sec. 22. Meetings of the Board, regular or special, shall be held at such place and upon such notice as the by-laws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

#### Officers, Agents, and Employees

Sec. 23. (a) The Board shall elect from its number a president, a vice-president, a secretary, and a treasurer, but the same person may be elected to the office of secretary and treasurer. The powers and duties of the foregoing officers, as well as their term of office and compensation shall be provided for in the by-laws.

(b) The Board shall appoint such other officers, agents, and employees as it deems necessary and fix their powers, duties, and compensation.

(c) Any officer, agent, or employee elected or appointed by the Board, may be removed by it whenever in its judgment the best interests of the corporation will be served.

#### Executive Committee

Sec. 24. Any corporation may, by its by-laws, provide for an executive committee to be elected from and by its Board of Directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by this Act.

#### Non-profit Operation

Sec. 25. (a) Each corporation shall be operated without profit to its members but the rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times.

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and

(2) For the creation of reserves.

(b) The revenues of the corporation shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation, and contingencies as the Board may from time to time prescribe.

(c) Revenues not required for the purposes set forth in Subsection (b) of this Section shall be returned from time to time to the members on a pro rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise as the Board determines; but such return may be made by way of general rate reduction to members, if the Board so elects.

#### Amendment of Articles of Incorporation

Sec. 26. A corporation may amend its articles of incorporation by an affirmative vote of a majority of the members who are present in person or by proxy at any regular meeting of such members, or at any special meeting that has been called for that purpose in the manner provided by the by-laws of such corporation. Notice to the members of such regular or special meeting shall state the general nature of each proposed amendment to be presented and voted upon at the meeting. No valid action shall be had or taken at any such regular or special meeting unless such regular or special meeting is attended by not less than five per cent (5%) of the members either in person or by proxy. The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation and to include any purpose, power, or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment is made. Articles of amendment signed by the president or vice-president, and attested by the secretary, certifying to such amendment and its lawful adoption shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act; and as soon as the Secretary of State shall have accepted the articles of amendment for filing and recording, and issued a certificate of amendment, the amendment or amendments shall be in effect, and the certificate of the Secretary of State shall be evidence of such filing.

#### Consolidation

Sec. 27. (a) Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the

name of the proposed consolidated corporation, the number of its directors, not less than three (3), the time of the annual meeting and election, and the name of at least three (3) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all of the powers of a corporation as originally organized hereunder.

#### Dissolution

Sec. 28. (a) Any corporation may dissolve by majority vote of the members, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person or by proxy by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(b) Such corporation shall, however, continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

(c) Any corporation which purports to have been incorporated or re-incorporated under this Act but which has not complied with all of the requirements for legal corporate existence may nevertheless file a certificate of dissolution in the same manner as a

validly existing corporation. The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known postoffice address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

## Fees

Sec. 29. The Secretary of State shall charge and collect for:

- (1) Filing articles of incorporation and issuing a certificate of incorporation, Ten Dollars (\$10).
- (2) Filing of articles of amendment and issuing a certificate of amendment, Two Dollars and Fifty Cents (\$2.50).
- (3) Filing articles of consolidation and issuing a certificate with respect thereto, Ten Dollars (\$10).
- (4) Filing articles of dissolution, Two Dollars and Fifty Cents (\$2.50).

## Exemption from Excise Taxes—License Fee

Sec. 30. Corporations formed hereunder shall pay annually, on or before May first, to the Secretary of State, a license fee of Ten Dollars (\$10) and such corporations shall be exempt from all other excise taxes of whatsoever kind or nature.

## Limited Exemption from Securities Act

Sec. 31. Whenever any corporation organized under this Act shall have borrowed money from any Federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of the Texas Securities Act (Chapter 100, Acts of the Forty-fourth Legislature, Regular Session), or any Acts amendatory thereof, nor shall the provisions of said Act apply to the issuance of membership certificates.

## Defectively Organized Corporations

Sec. 32. In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises shall not be questioned.

## Act Extended to Existing Corporations

Sec. 33. Any existing cooperative or nonprofit corporation or association, organized under any other law of this State, for the purpose of engaging in rural electrification, may, by a majority vote of the

members present in person or by proxy at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

## Construction of Act

Sec. 34. This Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

## Separability of Provisions

Sec. 35. If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

## Act complete in itself

Sec. 36. This Act is complete in itself and shall be controlling. The provisions of any other law of this State, except as provided in this Act, shall not apply to a corporation organized, or in process of organization, under this Act.

[Acts 1937, 45th Leg., p. 161, ch. 86; Acts 1947, 50th Leg., p. 215, ch. 123, § 1; Acts 1957, 55th Leg., p. 692, ch. 290, §§ 1, 2.]

## Art. 1528c. Telephone Cooperative Act

## Short Title

Sec. 1. This Act may be cited as the "Telephone Cooperative Act."

## Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(1) "Corporation" means any corporation organized under this Act or which becomes subject to this Act in the manner hereinafter provided.

(2) "Member" means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein.

(3) "Board" means a Board of Directors of a corporation organized under this Act.

(4) "Federal Agency" includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter created.

(5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, Federal agency, State or political subdivision thereof or any body politic.

(6) "Telephone service" means any communication service whereby voice communication through the use of electricity is the principal intended use thereof, and shall include all telephone lines, facilities or systems used in the rendition of such service.

(7) "Rural area" is defined to mean any area in this State which is located outside the boundaries of any incorporated or unincorporated city, town or village having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, or determined to have less than one thousand five hundred (1,500) inhabitants as provided by Subsection (4) of Section 4 of this Act.

Purpose

Sec. 3. Cooperative, non-profit corporations may be organized under this Act for the purpose of furnishing telephone service in rural areas to the widest practicable number of users of such service; provided, there shall be no duplication of service where reasonable adequate telephone service is available.

Powers of Corporation

Sec. 4. Each corporation shall have power:

(1) To sue and be sued, complain and defend, in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To furnish, improve and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing telephone facilities may continue service to persons, not in excess of forty per centum (40%) of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws; provided there shall be no duplication of services where reasonably adequate telephone services are available;

(5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish

the purpose for which the corporation is organized; provided that no cooperative shall furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereunder unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4;

(6) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(7) To make its facilities available to persons furnishing telephone service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in House Bill No. 393, Acts of the Fifty-first Legislature, Regular Session;

(12) To exercise the power of eminent domain in the manner provided by the laws of this State

for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems;

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

(16) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized.

#### Incorporators

Sec. 5. Any three or more natural persons of the age of twenty-one (21) years or more, residents of this State, may act as incorporators of a corporation to be organized under this Act by executing articles of incorporation as hereinafter provided in this Act.

#### Articles of Incorporation

Sec. 6. (a) The articles of incorporation shall recite that they are executed pursuant to this Act and such articles shall be signed by each incorporator and acknowledged by at least two (2) of the incorporators, or on their behalf, if they are cooperatives, and shall state:

(1) The name of the corporation, which name shall include the words "Telephone" and "Cooperative," and the abbreviation "Inc." The name of a corporation shall be distinct from the name of any other corporation organized under the laws of, or authorized to do business in, this State. The words "Telephone Cooperative" shall not be used in the corporate name of corporations organized under the laws of this State, or authorized to do business herein, other than those organized pursuant to the provisions of this Act;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify;

(4) The number of directors, not less than five (5), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but if expressly so stated the determination of such matters may be reserved to the directors by the by-laws; and

(8) Any provisions, not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the corporation.

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

#### Execution, Filing, and Recording of Articles of Incorporation

Sec. 7. When the incorporators of any corporation shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Act, said officer shall receive, file, and record the articles of incorporation of such corporation in his office, upon application and payment of all fees therefor, and give a certificate showing the recording of such articles and authority to do business thereunder. The articles shall thereupon be filed in the office of the Secretary of State, who shall record same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the articles, or of the record thereof, certified under the Great Seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the articles in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing.

#### Renewal of Articles of Incorporation

Sec. 8. Any corporation organized under this Act, whose articles of incorporation have expired by limitation, may revive such articles with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the time of the expiration of its said articles, by filing with the consent of a majority of its members, new articles of incorporation under the provisions of this Act, reciting therein such original privileges, immunities, and rights of property, and by filing therewith a certified copy of such original expired articles.

#### Organization Meeting

Sec. 9. After the issuance of the certificate of incorporation, an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting by-laws and electing officers and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting but such notice may be waived in writing.

#### By-laws

Sec. 10. The Board of Directors shall adopt the first by-laws of a corporation to be adopted following an incorporation, consolidation or amendment by an existing corporation of the Articles of Incorporation pursuant to Section 33 of this Act. Thereafter, the members shall adopt, amend or repeal the by-laws by the affirmative vote of a majority of those

members voting thereon at a meeting of the members. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Qualification of Members

Sec. 11. Each incorporator of a cooperative shall be a member thereof but no other person may become a member thereof unless such other person agrees to use telephone service furnished by the corporation when it is made available through its facilities. Membership in a corporation shall be evidenced by a certificate of membership which shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership. Membership certificates shall contain such provisions, consistent with this Act and the articles of incorporation of the corporation, as shall be prescribed by its by-laws. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and services thereof.

Meetings of Members

Sec. 12. (a) An annual meeting of the members of a corporation shall be held at such time and place as shall be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation.

(b) Special meetings of the members may be called by the president, by the Board of Directors, by any three (3) directors, or by not less than two hundred (200) members or ten per centum (10%) of all members, whichever shall be the lesser.

(c) Except as otherwise provided in this Act, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) days nor more than twenty-five (25) days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage prepaid addressed to the member at his address as it appears on the records of the corporation.

(d) Unless the by-laws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a corporation having not more than five hundred (500) members, shall be ten per centum (10%) of all members, present in person, and of a corporation having more than five hundred (500) members, shall be fifty (50) members or two per centum (2%) of all members, whichever is greater, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(e) Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members, and voting shall be in person, but, if the by-laws so provide, may also be by mail.

Waiver of Notice

Sec. 13. Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

Board of Directors

Sec. 14. (a) The business of a corporation shall be managed by a board of not less than five (5) directors, each of whom shall be a member of the corporation. The by-laws shall prescribe the number of directors, their qualifications, other than those prescribed in this Act, the manner of holding meetings of the Board of Directors and of electing successors to directors who shall resign, die, or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as directors and, except in emergencies, shall not receive any salaries for their services in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the Board of Directors and may provide for reimbursement of actual expenses of attendance.

(b) The directors of a corporation named in any articles of incorporation shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in the case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Act. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that half of them, or a number as near thereto as possible, shall be elected to serve until the next annual meeting of the members and that the remaining directors shall be elected to serve until the second succeeding annual meeting. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second succeeding annual meeting after their election.

(d) A majority of the Board of Directors shall constitute a quorum.

(e) The Board of Directors may exercise all of the powers of a corporation not conferred upon the members by this Act, or its articles of incorporation or by-laws.

#### Districts

Sec. 15. The by-laws may provide for the division of the territory served or to be served by a corporation into two (2) or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and functioning of district delegates. Such delegates, who shall be members, may nominate and elect directors. The by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, and the manner of changing such boundaries, and the manner in which such districts shall function. No member at any district meeting and no district delegate at any meeting shall vote by proxy or by mail.

#### Officers

Sec. 16. The officers of a corporation shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the Board of Directors. When a person holding any such office ceases to be a director, he shall cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The Board of Directors may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

#### Executive Committee

Sec. 17. Any corporation may, by its by-laws, provide for an executive committee to be elected from and by its Board of Directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by this Act.

#### Amendment of Articles of Incorporation

Sec. 18. A corporation may amend its articles of incorporation by complying with the following requirements, provided however, that a change of location of principal office may be effected in the manner set forth in Section 19 of this Act: The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds ( $\frac{2}{3}$ ) of those members voting hereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the corporation by its

president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Act and shall state:

- (1) the name of the corporation;
- (2) the address of its principal office; and
- (3) the amendment to its articles of incorporation.

The president or vice-president executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this Section in respect of the amendment set forth in such articles were duly complied with. The articles of amendment shall be filed with the Secretary of State in the same manner as the original articles of incorporation, as provided in this Act.

#### Change of the Location of Principal Office

Sec. 19. A corporation may, upon authorization of its Board of Directors or its members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested to by its secretary, in the office of the Secretary of State.

#### Consolidation

Sec. 20. (a) Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than five (5), the time of the annual meeting and election, and the name of at least five (5) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation at any regular meeting, or at any special meeting of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all the powers of a corporation as originally organized hereunder. Provided that no consolidation shall be made for the purpose of duplicating the facilities of any other telephone company where such other telephone company is giving or is willing to give reasonable adequate telephone service.

## Dissolution

Sec. 21. (a) Any corporation may be dissolved by majority vote of the members at any regular meeting, or at any special meeting of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person or by proxy by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(b) Such corporation shall, however, continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage, and, second, to members for the pro rata repayment of membership fees.

(c) Any corporation which purports to have been incorporated or reincorporated under this Act but which has not complied with all of the requirements for legal corporate existence may nevertheless file a certificate of dissolution in the same manner as a validly existing corporation. The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known post office address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

## Non-profit Operation

Sec. 22. A corporation shall be operated on a non-profit basis for the mutual benefit of its members and patrons. The by-laws of a corporation or its contracts with members and patrons shall contain such provision relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit and cooperative character.

## Disposition of Property

Sec. 23. (a) The Board of Directors of a corporation shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging

or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the Board of Directors shall determine, to secure any indebtedness of the corporation to the United States of America or any agency or instrumentality thereof. Any such mortgage or mortgages or deed or deeds of trust shall be exempt from mortgages recordation tax.

(b) A corporation may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of not less than two-thirds ( $\frac{2}{3}$ ) of all the members of the corporation; provided, however, that notwithstanding any other provision of this Act, or any other provision of law, the Board of Directors may, upon the authorization of a majority of those members of the corporation present at a meeting of the members thereof, the notice of which shall have set forth the proposed action, sell, lease or otherwise dispose of all or a substantial portion of its property to another corporation or a foreign corporation doing business in this State pursuant to this Act or to the holder or holders of any notes, bonds or other evidences of indebtedness issued to the United States of America or any agency or instrumentality thereof.

## Non-liability of Members for Debts of Corporation

Sec. 24. No member shall be liable or responsible for any debts of the corporation and the property of the members and shareholders shall not be subject to execution therefor.

## Recordation of Mortgages—Effect Thereof

Sec. 25. Any mortgage, deed of trust or other instrument executed by a corporation or foreign corporation doing business in this State pursuant to this Act, which affects real and personal property and which is recorded in the real property records in any county in which such property is located or is to be located, shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded, filed or indexed as provided by law in the proper office in such county as a mortgage of personal property. All after-acquired property of such corporation or foreign corporation described or referred to as being mortgaged or pledged in any such mortgage, deed of trust or other instrument, shall become subject to the lien thereof immediately upon the acquisition of such property by such corporation or foreign corporation, whether or not such property was in existence at the time of the execution of such mortgage, deed of trust or other instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has under the laws relating to recordation, with respect to property owned by such corporation or foreign corporation at the time of the

execution of such mortgage, deed of trust or other instrument and therein described or referred to as being mortgaged or pledged thereby. The lien upon personal property of any such mortgage, deed of trust or other instrument shall, after recordation thereof, continue in existence and of record for the period of time specified therein without the refiling thereof or the filing of any renewal certificate, affidavit or other supplemental information required by the laws relating to the renewal, maintenance or extension of liens upon personal property.

#### Construction Standards

Sec. 26. Construction of telephone lines and facilities by a corporation shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of such construction.

#### Directors, Officers or Members—Notaries

Sec. 27. No person who is authorized to take acknowledgments under the laws of this State shall be disqualified from taking acknowledgments of instruments executed in favor of a corporation or to which it is a party, by reason of being an officer, director, or member of such corporation.

#### Fees

Sec. 28. The Secretary of State shall charge and collect for:

- (a) Filing articles of incorporation, Ten Dollars (\$10);
- (b) Filing articles of amendment, Two Dollars and Fifty Cents (\$2.50);
- (c) Filing articles of consolidation, Ten Dollars (\$10);
- (d) Filing certificate of election to dissolve, Two Dollars and Fifty Cents (\$2.50);
- (e) Filing articles of dissolution, Two Dollars and Fifty Cents (\$2.50);
- (f) Filing certificate of change of principal office, Two Dollars and Fifty Cents (\$2.50).

#### Exemption from Excise Taxes—License Fee

Sec. 29. Each corporation doing business in this State pursuant to this Act shall pay annually on or before the first day of July to the Secretary of State a fee of Ten Dollars (\$10), but shall be exempt from all other excise taxes.

#### Connection and Interconnection of Facilities

Sec. 30. Any corporation doing business in this State pursuant to this Act (such corporation being designated in this section as "applicant") shall have the right to require any person furnishing telephone service to the public in this State (such person being designated in this section as "company") to interconnect the company's lines, facilities or systems with, or otherwise make available such lines, facilities or systems to, the applicant's telephone lines, facilities or systems, in order to provide a continuous line of

communication for the applicant's subscribers. The provisions of Articles 1426, 1427, 1430, 1431, and 1432 of the Revised Civil Statutes of Texas of 1925 may be enforced by or against any corporation created by virtue of this Act.

#### Securities Act Exemption

Sec. 31. The provisions of the Texas Securities Act (Chapter 100, Acts, Forty-fourth Legislature, Regular Session)<sup>1</sup> shall not apply to any note, bond or other evidence of indebtedness issued by any corporation doing business in this State pursuant to this Act, to the United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Securities Act shall not apply to the issuance of membership certificates by any corporation or any such foreign corporation.

#### Defectively Organized Corporations

Sec. 32. In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises shall not be questioned.

#### Act Extended to Existing Corporations

Sec. 33. Any existing cooperative or non-profit corporation or association, organized under any other law of this State, for the purpose of engaging in furnishing rural telephone service, may, by a majority vote of the members present in person or by proxy at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

#### Separability of Provisions

Sec. 34. If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

[Acts 1950, 51st Leg., 1st C.S., p. 33, ch. 4; Acts 1953, 53rd Leg., p. 595, ch. 238, §§ 1, 2.]

<sup>1</sup> Art. 600a (repealed); Penal Code, art. 1083a (transferred; see, now, art. 581-1 et seq.).

## Art. 1528d. Automobile Club Services Act

#### Short Title

Sec. 1. This Act shall be known and cited as the Automobile Club Services Act.

## Definitions

Sec. 2. (a) "Automobile Club" shall mean any person who in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to travel and the operation, use or maintenance of a motor vehicle in the supplying of services which by way of illustration and not by way of limitation may include such services as community traffic safety service, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service and legal fee reimbursement service in the defense of traffic offenses, and the purchase of accidental injury and death benefits insurance coverage from a duly authorized insurance company.

(b) "Person" shall mean any person, firm, partnership, corporation or association which conducts an Automobile Club Service business in this State.

## Certificate of Authority Required

Sec. 3. From and after the effective date of this Act, it shall be unlawful for any person to engage in the business of an Automobile Club as herein defined, without having first met the requirements and obtained a certificate of authority from the Secretary of State as hereinafter provided for. The Secretary of State shall promulgate, prescribe and furnish such forms as may be necessary for any applicant to meet the requirements of this Act and shall furnish such forms, upon request, to those applicants requesting such forms; provided, however, nothing herein shall relieve any Automobile Club from the obligation to furnish services under such contracts or membership agreements that have been entered into prior to the effective date of this Act.

## Application for Certificate of Authority and Deposit of Security

Sec. 4. The application for a certificate of authority as an Automobile Club to be filed with the Secretary of State shall be in such form and detail as the Secretary of State may require and shall be executed under oath by such Club's president or other principal officer and there shall be filed with the application the following:

(a) If such Club is a corporation, a certificate from the Secretary of State that it has complied with the corporation laws of this State.

(b) If not incorporated, a list of all persons owning an interest in the Automobile Club, the officers thereof and the parties to any operating agreement or management agreement affecting the Automobile Club together with a copy of any such agreement.

(c) The first year's annual license fee in the amount of One Hundred Dollars (\$100) shall accompany such application.

(d) Proof of security having been deposited with the State or pledged by the Club in such

form as the Secretary of State may prescribe in any of the following ways: The sum of Twenty-five Thousand Dollars (\$25,000) in cash or Twenty-five Thousand Dollars (\$25,000) in securities approved by the Secretary of State or in lieu thereof, a bond in such form as the Secretary of State may prescribe in the amount of Twenty-five Thousand Dollars (\$25,000) to the State of Texas and executed by a corporate surety licensed to do business in the State of Texas and conditioned upon the faithful performance in the selling or rendering of Automobile Club service and payment of any fines or penalties levied against it for failure to comply with the provisions of this Act; provided however, that the aggregate liability of the surety for all breaches of the conditions of the bond and for the payment of all fines and penalties shall, in no event, exceed the amount of said bond.

Upon filing of the application, certificates or security as above provided for, it shall be the duty of the Secretary of State within fifteen (15) days thereafter to issue or deny a certificate of authority to said Automobile Club. Failure of the Secretary of State to issue such certificate within said fifteen (15) day period shall entitle the applicant to a refund of all moneys and security deposited with the application.

The deposit herein provided for shall thereafter be maintained so long as said Club shall have outstanding any liability or obligation in this State. Upon proper showing, to the satisfaction of the Secretary of State, that the Club has ceased to do business and that all liabilities and obligations of the Club have been satisfied, the Secretary of State is hereby authorized to return the security to the Club or to deliver the security in accordance with any order of a court of competent jurisdiction.

## Certificate of Authority—Annual Renewal Required

Sec. 5. Every certificate of authority issued hereunder shall expire annually on August 31, of each year unless sooner revoked or suspended as hereinafter provided and application for renewal of such certificate of authority shall be filed upon such forms as are provided by the Secretary of State and shall contain such information as the Secretary of State may prescribe. The annual license fee for renewal of such certificate of authority shall be One Hundred Dollars (\$100).

## Registration of Salesmen or Agents

Sec. 6. Each and every Automobile Club operating in this State pursuant to a certificate of authority issued hereunder shall within thirty (30) days of the date of employment, file with the Secretary of State a notice of appointment of salesmen or agents by an Automobile Club to sell memberships in the Automobile Club to the public. This notification shall be upon such form as the Secretary of State may prescribe and shall contain the name, address, age, sex and social security number of such salesman

or agent, and also contain proof satisfactory to the Secretary of State that such applicant is of good moral character. Upon termination of any salesman's or agent's employment by an Automobile Club, such Automobile Club shall within thirty (30) days thereafter notify the Secretary of State of such termination. The registration fee for salesmen or agents of Automobile Clubs shall be Three Dollars (\$3) annually and shall be renewed each twelve (12) months after its issuance.

Revocation or Suspension of Certificate

Sec. 7. If the Secretary of State at any time for good cause shown, and after public hearing, shall determine that an Automobile Club has violated a provision of this Act, that it is not operating an Automobile Club as defined herein, that it is insolvent; that its assets are less than its liabilities, that it refuses to submit to an examination by the Secretary of State, that it is transacting business fraudulently, or that any owner, officer or operating manager is not of good moral character, he shall thereupon revoke or suspend its certificate of authority and shall give notice thereof to the public in such manner as he shall deem proper; provided however, that any person aggrieved by any decision of the Secretary of State shall have the right to appeal such decision to the District Court in the county of the aggrieved person's residence within sixty (60) days after the date of notice by registered mail of such decision but not thereafter.

Advertising Limitation—Exemptions

Sec. 8. (a) Automobile Clubs operating hereunder shall make no reference to their certificate of authority or approval from the Secretary of State in any advertising, circular, contract or membership card nor shall such Automobile Clubs advertise or describe their services in such a manner as would lead the public to believe such services include automobile insurance.

(b) All Automobile Clubs operating pursuant to a certificate of authority issued hereunder shall be exempt from the operation of all insurance laws of this State, except that accidental injury and death benefits furnished members of such Automobile Clubs shall be covered under a group policy issued to the Automobile Club for the benefit of its members and such policy shall be issued by a company licensed to write such insurance in this State. Any such group policy issued to the Automobile Club shall be evidenced to the membership of said Club by a certificate of participation in said group policy that shall state on the face of said certificate in at least fourteen-point black bold-face type that the certificate is only a "certificate of participation in an accidental injury and death group policy and is not automobile liability insurance coverage."

Members to be Furnished Description of Services

Sec. 9. Every Automobile Club operating under the provisions of this Act shall furnish to its mem-

bers a service contract or membership card together with the following information:

- (a) The exact name of the Automobile Club.
- (b) The exact location of the Automobile Club's home office, and of its usual place of business in this State, giving street, number and city.
- (c) A description of the services or benefits to which the member is entitled.
- (d) The completed application and the description of services shall constitute the service contract.

Secretary of State to be Furnished Service Contract

Sec. 10. Every Automobile Club operating under the provisions of this Act shall furnish to the Secretary of State a certified copy of the service contract and if said Club provides participation in a group accidental injury or death policy, then a copy of the certificate of participation furnished the member shall be filed with the certified copy of the service contract together with the following information:

- (a) The exact name of the Automobile Club.
- (b) The exact location of the Automobile Club's home office, and of its usual place of business in this State, giving street, number and city.
- (c) Any change, addition or supplement to the service contract, change of office location or change of name shall be filed with the Secretary of State.

Fees

Sec. 11. All fees collected hereunder by the Secretary of State shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

Solicitation for Unauthorized Automobile Clubs Prohibited

Sec. 12. No person shall solicit, or aid in the solicitation of, another person to purchase a service contract or membership issued by an Automobile Club not holding a valid certificate of authority under the terms of this Act.

Penalties

Sec. 13. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500), and by imprisonment in the county jail for not more than six (6) months.

Severability Clause

Sec. 14. If any word, phrase, sentence or provision of this Act is determined to be invalid, such invalidity shall not affect the other provisions of this Act and they shall be given effect without the invalid provision, and to this end the provisions of this Act are declared to be severable.

## Effective Date

Sec. 15. This Act shall become effective from and after September 1, 1963.  
[Acts 1963, 58th Leg., p. 678, ch. 250.]

**Art. 1528e. Professional Corporations Act**

## Title

Sec. 1. This Act shall be known and may be cited as "The Texas Professional Corporation Act."

## Sections, Subsections and Captions

Sec. 2. The division of this Act into sections and subsections and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

## Definitions

Sec. 3. As used in this Act, unless the context otherwise requires, the term:

(a) "Professional Service" means any type of personal service which requires as a condition precedent to the rendering of such service, the obtaining of a license, permit, certificate of registration or other legal authorization, and which prior to the passage of this Act and by reason of law, could not be performed by a corporation, including by way of example and not in limitation of the generality of the foregoing provisions of this definition, the personal services rendered by architects; attorneys-at-law, certified public accountants, dentists, public accountants, and veterinarians; provided, however, that physicians, surgeons and other doctors of medicine are specifically excluded from the operations of this Act, since there are established precedents allowing them to associate for the practice of medicine in joint stock companies.

(b) "Professional Corporation" means a corporation organized under this Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise duly authorized within this state to render the same professional service as the corporation.

## Articles of Incorporation

Sec. 4. One or more individuals, each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state, may incorporate a professional corporation by filing, in duplicate originals, Articles of Incorporation with the Secretary of State. No professional corporation organized under this Act shall render more than one kind of professional service. The Articles of Incorporation shall set forth:

(a) The purpose for which the corporation is organized, including a statement of the one

specific kind of professional service to be rendered by the corporation.

(b) The name of the corporation.

(c) The names and addresses of the individuals who are to be the shareholders of the corporation.

(d) The number of directors constituting the initial Board of Directors and the names and addresses of the persons who are to serve as the initial directors.

(e) The address of the principal office of the corporation.

(f) If the duration of the corporation is not to be perpetual, the period of its duration.

(g) The names and addresses of the Incorporators, each of whom must be duly licensed or otherwise legally authorized to render in this state the specific kind of professional service to be rendered by the corporation.

(h) Such other provisions, not inconsistent with law, which the shareholders may elect to set forth for the regulation of the internal affairs of the corporation.

## Applicability of Texas Business Corporation Act

Sec. 5. The Texas Business Corporation Act shall be applicable to professional corporations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional corporations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other business corporations except insofar as the same may be limited or enlarged by this Act. This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

## Purpose

Sec. 6. A professional corporation may be organized under this Act only for the purpose of rendering one specific type of professional service and services ancillary thereto.

## Powers

Sec. 7. A professional corporation organized under this Act shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in its corporate name.

(c) To acquire, own, improve, use and otherwise deal with real or personal property in its own name.

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

(e) To make contracts and incur liabilities, borrow money at such rates of interest as its Board of Directors may determine, issue its notes, bonds and other obligations, and secure any of its obligations by a mortgage or pledge of all or any of its property and income.

(f) To pay pensions and establish pension plans, pension trusts, profit sharing plans and trusts, health, accident and hospitalization plans, and other deferred compensation and incentive plans for its employees.

(g) To insure the life of any shareholder, director, officer, agent or employee, and to continue such insurance after the relationship terminates.

(h) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Name

Sec. 8. A professional corporation may adopt any name that is not contrary to the law or ethics regulating the practice of the professional service rendered through the professional corporation.

Board of Directors

Sec. 9. A professional corporation shall be governed by a Board of two or more Directors, which shall have the power to manage the business and affairs of the corporation, and the continuing authority to make management decisions on its behalf. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors. The number of directors shall be not less than two; but subject to this limitation, the number of directors shall be fixed by the bylaws of the professional corporation or by the Articles of Incorporation if such articles specifically prescribe the number of directors.

Officers

Sec. 10. The Board of Directors shall elect a President and a Secretary and such other officers as it may deem desirable to have to conduct the affairs of the professional corporation. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

Bylaws

Sec. 11. The shareholders may adopt bylaws for the regulation of the affairs of the professional corporation, or if such authority is given by the Articles of Incorporation, the shareholders may delegate to the Board of Directors the power to make and amend bylaws. The bylaws shall contain such provisions for the regulation and management of the affairs of the professional corporation as are not inconsistent with law and the Articles of Incorporation.

Issuance and Transfer of Shares

Sec. 12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals who are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. Except to the

extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person who is not a shareholder, provided such person is duly licensed or qualified under the laws of this state to render the same type of professional service which the corporation was organized to render, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation. Any restriction on the transfer of shares imposed by the Articles of Incorporation, the bylaws or any stock purchase or redemption agreement shall be written or printed on all certificates representing shares issued to shareholders, unless such restrictions are incorporated by reference pursuant to the provisions of the Texas Business Corporation Act.

Redemption of Shares

Sec. 13. A professional corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws, or any applicable stock purchase or redemption agreement.

Legal Disqualification

Sec. 14. If any shareholder, officer or director of a professional corporation, or any agent or employee thereof who has been rendering professional service for or with it of the same type which such professional corporation was organized to render, becomes legally disqualified to render such professional service, he shall sever all employment with such professional corporation and shall terminate all financial interest therein forthwith; and such corporation shall thereupon purchase or cause to be purchased from him all shares owned by him in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement. Likewise, if any person who is not licensed or duly authorized to render the professional service which a professional corporation was organized to render should succeed to the interest of any shareholder of such professional corporation, the person holding such interest shall terminate all financial interest in such professional corporation forthwith; and such corporation shall thereupon purchase or cause to be purchased from such person all shares owned by such person in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement.

## Rendition of Professional Services

Sec. 15. A professional corporation may render professional service only through its officers, employees and agents who are duly licensed to render such professional service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

## Professional Relationships not Affected

Sec. 16. The provisions of this Act shall not be construed to alter or affect the professional relationship between a person furnishing professional service and a person receiving such service, and all such confidential relationships enjoyed under this state shall remain unchanged. Nothing in this Act shall remove or diminish any rights at law which a person receiving professional services shall have against a person furnishing professional services for errors, omissions, negligence, incompetence, or malfeasance. The corporation shall be jointly and severally liable for such professional errors, omissions, negligence, incompetence, or malfeasance on the part of any officer or employee thereof.

## Continuity of Existence

Sec. 17. Unless the Articles of Incorporation expressly provide otherwise, a professional corporation shall continue as a separate entity for all purposes and for such period of time as is provided in the Articles of Incorporation until dissolved by a vote of its shareholders. A professional corporation shall continue to exist regardless of the death, incompetency, bankruptcy, resignation, withdrawal, retirement or expulsion of any one or more of its shareholders or the transfer of any of its shares to any new holder or the happening of any other event which under the laws of this state and under like circumstances would cause a dissolution of a partnership, it being the intent of this Section that such professional corporation shall have continuity of life independent of the life or status of its shareholders. No shareholder shall have power to dissolve the professional corporation by his independent act of any kind.

## Dissolution

Sec. 18. A professional corporation may be dissolved at any time by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation by a meeting called and held in accordance with the bylaws or by unanimous written consent of all shareholders without the necessity of a meeting. A copy of such resolution (noting the shares voting for and against such reso-

lution) or of such written consent, certified by the President or a Vice-President, or the Secretary of the corporation, shall be filed in duplicate originals in the office of the Secretary of State and the dissolution shall be effective from the time of such filing. In the event of a dissolution of a professional corporation, the Board of Directors, as Trustees of the property and assets of the corporation, shall apply the assets first to the payment of debts of the corporation and second, to or among the shareholders, as the Articles of Incorporation shall provide.

## Exemption from Securities Laws

Sec. 19. The sale, issuance or offering of any capital stock of a professional corporation to persons permitted by the provisions of this Act to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Act, which provide for supervision, registration or regulation in connection with the sale, issuance or offering of securities; and the sale, issuance or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance or offering of securities.

## Effective Date

Sec. 20. This Act shall be effective on and after January 1, 1970.  
[Acts 1969, 61st Leg., p. 2304, ch. 779, eff. Jan. 1, 1970.]

**Art. 1528f. Professional Associations Act**

## Short Title

Sec. 1. This Act may be cited as the Texas Professional Association Act.

## Authority

Sec. 2. (A) Formation. Any one or more persons duly licensed to practice a profession under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(B) Licenses. All members of the association shall be licensed to perform the type of professional service for which the association is formed.

## Definitions

Sec. 3. As used in this Act, the term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license, and which service by law cannot be performed by a corporation. The term "license" includes a license, certificate of registration or any other evidence of the satisfaction of state requirements.

Name

Sec. 4. A professional association shall adopt a name which shall be followed by the word or words "Associated," "Association," "Professional Association," "and Associates," or the abbreviation "Assoc." or "P.A."; provided, and except, however, a professional association shall not adopt or make use of any name which is contrary to or in conflict with any law or ethics regulating the practice or practitioners of any professional service rendered through or in connection with the professional association.

Powers Concerning Property and Suits

Sec. 5. (A) Property. A professional association may in its own name invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, and may own real or personal property necessary or appropriate for rendering its professional service. Any investment or property so owned may be transferred in the association name by action of the Board of Directors or Executive Committee.

(B) Suits. An association shall have power to sue and be sued, complain and defend in its association name.

Licensed Individuals as Employees of Association—Prohibition

Sec. 6. Each individual licensed in this state to perform professional services who is employed by a professional association shall remain subject to reprimand or discipline for his conduct under the provisions of the licensing statute pursuant to which he is licensed.

Professional Relations

Sec. 7. This Act does not alter any law applicable to the relationship between a person furnishing professional service and a person receiving such professional service including liability arising out of such professional service.

Articles of Association

Sec. 8. (A) Required provisions. The articles of association shall set forth:

- (1) The name and address of the association
- (2) The period of duration
- (3) The type of professional service to be performed
- (4) The names and addresses of each of the original members
- (5) A statement that each of the original members is licensed to perform the type of professional service for which the association is formed.

(B) Continuity. Articles of association may provide that a professional association

- (1) shall continue as a separate entity independent of its members, for all purposes, for such period of time as provided in the articles, or until dissolved by a vote of two-thirds of the members, and

(2) shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of membership, retirement, or expulsion of any one or more of the members (except the last surviving member), the admission of or transfer of membership to any new member or members, or the happening of any other event, which under the law of this state and under like circumstances, would work a dissolution of a partnership.

(C) Power to dissolve. The articles shall provide that no member of a professional association shall have the power to dissolve the association by his independent act of any kind.

(D) Optional provisions. The articles of association may set forth any other provision, not inconsistent with the law, which the members elect to set forth for the regulation of the internal affairs of the association.

(E) Execution. The articles of association shall be signed and verified by each of the members.

Governing Body; Officers

Sec. 9. (A) Board or committee. A professional association organized pursuant to the provisions of this Act shall be governed by a Board of Directors or an Executive Committee elected by the members, and represented by officers elected by the Board of Directors or Executive Committee, so that centralization of management will be assured.

(B) Member's power to bind. No member shall have the power to bind the association within the scope of the association's business or profession merely by virtue of his being a member of the association.

(C) Qualification of officers and board or committee members. Officers and members of the Board of Directors or Executive Committee shall be members of the professional association. Officers need not be members of the Board of Directors or Executive Committee except that the President shall be a member of the Board of Directors or Executive Committee.

(D) Bylaws. The members may adopt such bylaws as they may deem proper, or the power to promulgate bylaws of the association may be delegated by the articles of association to the Board of Directors or Executive Committee, as the members may decide.

(E) Members' voting rights. Each member shall have power to cast such vote or votes at the meeting of the members as the articles of association shall provide.

(F) Agents and employees. The officers of the professional association may employ such agents or employees of the association as they may deem advisable.

(G) Officers. The officers of the association shall include a President, Vice-President, Secretary, Treasurer, and such other officers as the Board of Direc-

tors or Executive Committee may determine. Any one person may serve in more than one office provided that the President and the Secretary of the professional association shall not be the same person unless the association has only one member.

Shares or Units of Ownership—Transfer

Sec. 10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

Regulation of Practice of Law

Sec. 11. The manner in which lawyers practice law under this Act is subject to the powers of the Supreme Court to regulate the practice of law.

Filing of Articles of Association

Sec. 12. (A) Duplicate originals of the articles of association shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of association conform to law, he shall, when all fees have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of association to which he shall affix the other duplicate original.

(B) The certificate of association, together with the duplicate original of the articles of association affixed thereto by the Secretary of State, shall be delivered to the members or their representatives.

Effect of Issuance of Certificate of Association

Sec. 13. Upon the issuance of the certificate of association, the association's existence shall begin.

Amendment of Articles of Association

Sec. 14. (A) Authority to amend. A professional association may amend its articles of association, from time to time, in accordance with the procedure for amendment stated therein or if none is stated therein, by two-thirds vote of its members.

(B) Acts not requiring amendment. Changes in membership or transfer of shares or units of ownership shall not require amendment.

Articles of Amendment

Sec. 15. The Articles of amendment shall be executed in duplicate by the association by its president or a vice-president and by its secretary or an assistant secretary, and certified by one of the officers signing such articles, and shall set forth:

- (1) The name and address of the association
- (2) If the amendment alters any provision of the original or amended articles of association,

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

(3) The date of the adoption of the amendment

(4) A statement that the amendment was adopted in accordance with the procedure for amendment stated in the articles of association, or, if none is stated therein, a statement that the amendment was adopted by two-thirds vote of its members.

Filing of Articles of Amendment

Sec. 16. (A) Duplicate originals of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

(B) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

Effect of Certificate of Amendment

Sec. 17. (A) Issuance. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of association shall be deemed to be amended accordingly.

(B) Prior rights. No amendment shall affect any existing cause of action in favor of or against the association, or any pending suit to which the association shall be a party, or the existing rights of persons other than members. If the association name is changed by amendment, no suit brought by or against the association under its former name shall abate for that reason.

Articles of Dissolution

Sec. 18. The articles of dissolution shall be executed in duplicate by the association by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. The articles of dissolution shall set forth:

- (1) The name and address of the association
- (2) The names and respective addresses of its officers

(3) The names and respective addresses of the members of its Board of Directors or Executive Committee

(4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

#### Filing of Articles of Dissolution

Sec. 19. (A) Duplicate originals of the articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when all fees have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

(B) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

#### Effect of Certificate of Dissolution

Sec. 20. Upon the issuance of the certificate of dissolution by the Secretary of State, the dissolution shall become effective and the existence of the association shall cease except for the purpose of suits, other proceedings and acts necessary for the winding up of the association.

#### Annual Statement

Sec. 21. A professional association shall in June of each year file with the Secretary of State a statement showing the name and address of the association; the names and addresses of all members of the association, and all officers and all members of the Board of Directors or Executive Committee; and shall certify that all members are licensed to perform the type of professional service for which the association is formed. The statement shall be on such form as the Secretary of State shall prescribe and furnish. It shall be signed by the president or a vice-president and by the secretary or an assistant secretary of the association, and verified by one of the officers signing the statement.

#### Fees

Sec. 22. The Secretary of State is authorized and required to collect for the use of the state the following fees:

(1) Filing articles of association and issuing a certificate of association, Fifty Dollars (\$50.00)

(2) Filing articles of amendment and issuing a certificate of amendment, Fifty Dollars (\$50.00)

(3) Filing articles of dissolution and issuing a certificate of dissolution, Five Dollars (\$5.00)

(4) Filing annual statement, Ten Dollars (\$10.00).

#### Existing Associations

Sec. 23. Any existing association may become subject to this Act by complying with its terms and filing requirements.

#### Association Liability

Sec. 24. Nothing in this Act shall remove or diminish any rights at law which a person receiving professional services shall have against a person furnishing professional services for errors, omissions, negligence, incompetency or malfeasance. The association (but not the individual members) shall be jointly and severally liable for such professional errors, omissions, negligence, incompetency, or malfeasance on the part of any officer or employee thereof when such officer or employee is in the course of his employment for the association.

#### Applicability of Business Corporation Act

Sec. 25. The Texas Business Corporation Act shall be applicable to professional associations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional associations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of business corporations except insofar as the same may be limited or enlarged by this Act. This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

[Acts 1969, 62nd Leg., p. 2513, ch. 840, eff. June 18, 1969; Acts 1971, 62nd Leg., p. 888, ch. 118, §§ 1 to 6, eff. May 10, 1971.]

### Art. 1528g. Business Development Corporations

#### Definitions

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

(1) "Corporation" means a business development corporation created under the terms of this Act.

(2) "Board of directors" means the board of directors of a business development corporation.

(3) "Financial institution" means any banking corporation or trust company, building and loan association, governmental agency, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(4) "Member" means any financial institution authorized to do business in this state which shall undertake to lend money to a corporation created under the terms of this Act.

(5) "Loan limit" means the maximum amount permitted to be outstanding at one time on

loans by a member to a business development corporation.

#### Incorporation

Sec. 2. (a) Subject to the provisions of the Texas Securities Act,<sup>1</sup> 25 or more persons, a majority of whom shall be residents of this state, may form a business development corporation for the purpose of promoting, developing, and advancing the prosperity and economic welfare of this state.

(b) The corporation may be organized either as a profit making corporation under the Texas Business Corporation Act, or as a nonprofit corporation under the Texas Non-Profit Corporation Act.<sup>2</sup>

(c) The articles of incorporation shall set forth:

(1) the name of the corporation, which shall include the words "Business Development Corporation";

(2) the purpose or purposes for which the corporation is organized, which shall include the following:

The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of this state and its citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state"; and

(3) any other information required by the Texas Business Corporation Act, if the corporation is organized as a profit making corporation, or by the Texas Non-Profit Corporation Act, if the corporation is organized as a nonprofit corporation.

#### Powers

Sec. 3. (a) In addition to the powers conferred on business corporations generally by the Texas Business Corporation Act, or if the corporation is organized as a nonprofit corporation, by the Texas Non-Profit Corporation Act, the corporation has the following powers:

(1) to elect, appoint, and employ officers, agents, and employees; to make contracts and

incur liabilities for any of the purposes of the corporation;

(2) to borrow money on a secured or unsecured basis to carry out any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure any evidence of indebtedness by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing stockholder or member approval;

(3) to make secured or unsecured loans and to establish and regulate the terms and conditions of these loans and the charges for interest or service connected therewith; however, the corporation shall not approve any application for a loan unless and until the person applying for the loan demonstrates that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least two banks or other financial institutions; it is the intention of the Legislature not to take from the lending institutions of this state any loans desired by these institutions generally in the course of their business;

(4) to purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(5) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(6) to protect its position as creditor by acquiring the goodwill, business, rights, real and personal property including stock, shares, bonds, debentures, notes, and other evidences of indebtedness, and other assets or any part thereof or interest therein, of any persons, firms, corporations, joint-stock companies, associations, or trusts to whom or to which the corporation has loaned money, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, or trust;

(7) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraphs (4), (5), or (6), as security for the

payment of any part of the purchase price thereof;

(8) to promote the establishment of local development corporations in the various communities of this state; to enter into agreements with them; and to cooperate with, assist, and otherwise encourage such local foundations;

(9) to participate with any duly authorized federal lending agency in the making of loans.

(b) Any corporation organized under the provisions of this Act shall be a state development company as defined in the Small Business Investment Act of 1958, as amended, Public Law 85-699, 85th Congress,<sup>3</sup> or any other similar Federal legislation, and shall be authorized to operate on a statewide basis.

#### Participation

Sec. 4. All natural persons and corporations authorized to conduct business in this state, including without any implied limitation public utility companies, insurance and casualty companies, and foreign corporations licensed to do business in this state, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of capital stock of, the corporation, and while owners of the stock, may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

#### Membership

Sec. 5. (a) Any financial institution may become a member of the corporation and may make loans to the corporation as provided by this Act.

(b) Any financial institution may request membership in the corporation by making application to the board of directors in a manner prescribed by the board of directors, and membership shall be effective upon acceptance of the application by the board of directors.

(c) Any financial institution which becomes a member of the corporation may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owner of the stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon. However, no member may acquire capital stock in an amount greater than 10 percent of the loan limit of that member. The amount of capital stock of the corporation which a member may acquire is in addition to the amount of capital stock in corporations which the member may otherwise acquire.

(d) A financial institution which is not a member of the corporation may not acquire any shares of the capital stock of the corporation.

#### Loans to the Corporation

Sec. 6. (a) Each member of the corporation shall make loans to the corporation when called upon by it to do so on such terms and conditions as shall be approved from time to time by the board of directors.

(b) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section.

(c) No loan to the corporation may be made if immediately thereafter the total amount of the obligations of the corporation would exceed 50 times the capital of the corporation. For the purposes of this subsection, the capital of the corporation includes the amount of the outstanding capital stock of the corporation, whether common or preferred, and the earned or paid-in surplus of the corporation.

(d) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by the member, shall not exceed:

(1) twenty percent of the total amount then outstanding on loans to the corporation by all members, including outstanding amounts validly called for loan but not yet loaned;

(2) the following limit, to be determined as of the time such member becomes a member or at any time requested by a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the State Board of Insurance: an amount of two percent of the capital and surplus of commercial banks and trust companies or \$750,000, whichever is the lesser amount; an amount of one percent of the total outstanding loans made by a building and loan or savings and loan association; an amount of one percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; an amount of one percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; an amount of one-tenth of one percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for any government pension fund or for other financial institutions.

(e) Subject to Subsection (d) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corpora-

tion and the investment in capital stock of the corporation held by such member at the time of such call.

(f) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

#### Withdrawal

Sec. 7. Upon written notice to the board of directors six months in advance, a member may withdraw from the corporation at the expiration date of the notice. A member is not obligated to make any loans to the corporation pursuant to calls made subsequent to the expiration date, but a member shall fulfill any obligations which have accrued or for which commitments have been made before the expiration date.

#### Powers of Members and Stockholders; Voting

Sec. 8. (a) The stockholders and the members of the corporation shall have the following powers:

- (1) to determine the number of and elect the directors as provided by Section 9 of this Act;
- (2) to make, amend, and repeal bylaws of the corporation; and
- (3) to exercise any other powers of the corporation which may be conferred on the stockholders and the members by the bylaws.

(b) Each stockholder has one vote, in person or by proxy, for each share of capital stock held by the stockholder, and each member has one vote, in person or by proxy; however, any member with a loan limit greater than \$1,000 has one additional vote, in person or by proxy, for each additional \$1,000 which the member may have outstanding on loans to the corporation at any one time as determined under the provisions of Section 6 of this Act.

#### Officers and Directors

Sec. 9. (a) The organization, control, and management of the corporation are vested in a board of not less than 15 nor more than 21 directors.

(b) The board of directors may exercise all the powers of the corporation except those conferred upon the stockholders or members by law or by the bylaws of the corporation.

(c) The board of directors shall choose and appoint a president, a treasurer, and all other agents and officers of the corporation and shall fill all vacancies except vacancies in the board of directors, which

shall be filled as provided by Subsection (g) of this section.

(d) The board of directors shall be named in the first instance by the incorporators and shall be elected thereafter at each annual meeting of the corporation, or if no annual meeting is held at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting.

(e) At any annual meeting or special meeting held in lieu of the annual meeting, the members of the corporation shall elect two-thirds of the directors, and the stockholders shall elect the remaining directors.

(f) The directors shall hold office until the next annual meeting or special meeting of the corporation held in lieu of the annual meeting after their election and until their successors are elected and have qualified, unless sooner removed in accordance with the provisions of the bylaws.

(g) Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

#### Surplus

Sec. 10. (a) The corporation shall set apart as earned surplus not less than 10 percent of its net earnings each year, until such surplus, with any unimpaired surplus paid in, is equal to one-half of the amount paid in on the capital stock then outstanding. The surplus shall be kept to secure against losses and contingencies, and whenever it becomes impaired, it shall be reimbursed in the manner provided for its accumulation.

(b) Net earnings and surplus shall be determined by the board of directors after providing for the required reserves as the directors deem advisable, and the determination of the directors made in good faith shall be conclusive on all persons.

#### Depositories

Sec. 11. (a) The corporation may deposit any of its funds in any banking institution which has been designated as a depository by a vote of the majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

(b) The corporation may not receive money on deposit.

#### Report of Condition

Sec. 12. The corporation shall make annual reports of its condition to the banking commission and the State Board of Insurance, and the corp

tion shall furnish any information which may from time to time be required by the secretary of state. [Acts 1971, 62nd Leg., p. 2601, ch. 853, eff. Aug. 30, 1971.]

<sup>1</sup> Article 581-1 et seq.

<sup>2</sup> Article 1396-1.01 et seq.

<sup>3</sup> See 15 U.S.C.A. § 662.

**Art. 1528h. Dealing in Acceptances**

Any officer, director, employé, or agent of any corporation organized for the purpose of contracting with reference to, or otherwise dealing in acceptances, bills of exchange, bills of lading, warehouse and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing of agricultural products, who shall enter into, or cause such corporation to enter into, any contract of acceptance, guaranty, indorsement, or suretyship, without complying with the laws of this State regulating such contracts, shall be fined not less than two hundred nor more than one thousand

dollars, or be imprisoned in jail not less than three months nor more than one year, or both. [Acts 1925, S.B. 84.]

**CHAPTER NINETEEN. FOREIGN CORPORATIONS [Repealed]**

Arts. 1529, 1530. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1531. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Arts. 1532 to 1538. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

**CHAPTER NINETEEN A. NON-PAR CORPORATIONS [Repealed]**

Arts. 1538a to 1538n. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1. Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

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## CHAPTER ONE. MISCELLANEOUS PROVISIONS

### Article

- 1.01. Design of the Code.
- 1.01a. Definitions.
- 1.02. County Judge Failing to Act.
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- 1.04. To Certify Death of Officer.
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- 1.06. Ineligibility Bars.
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### Art. 1.01. Design of the Code

The aim in adopting this Code is to state in plain language the laws governing the nomination and election of officers and of holding other elections, to simplify, clarify and harmonize the existing laws in regard to parties, suffrage, nominations, and elections, and to safeguard the purity of the ballot box against error, fraud, mistake and corruption, to the end that the will of the people shall prevail and that true democracy shall not perish from the Lone Star State. To that end the provisions of this Code shall apply to all elections and primaries held in this State, except as otherwise provided herein.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 1.]

*Acts 1951, 52nd Leg., ch. 492, enacting the Texas Election Code of 1951, provided in section 2 for the repeal of all laws relating to elections, suffrage and parties, as found in Title 50 of the Revised Civil Statutes of 1925.*

*Article 14.11 of the Election Code of 1951 repealed conflicting laws but preserved from such repeal any Act passed at the Regular Session of the Fifty-second Legislature, 1951. The Acts thus saved from repeal included—*

*Acts 1951, 52nd Leg., ch. 313, § 1, amending Art. 2943 of the Civil Statutes, subsequently repealed by Acts 1963, 58th Leg., ch. 424, § 121(c).*

*Acts 1951, 52nd Leg., ch. 333, § 1, amending Art. 3026a of the Civil Statutes, subsequently repealed by Acts 1963, 58th Leg., ch. 424, § 121(c).*

*Acts 1951, 52nd Leg., ch. 327, § 1, originally incorporated in the Civil Statutes as Art. 3116g but subsequently repealed by Acts 1963, 58th Leg., ch. 424, § 121(c).*

*Article 14.12 of the Election Code of 1951 includes a provision that nothing in the Act shall in anywise alter, amend or repeal Acts 1951, 52nd Leg., p. 71, ch. 44, which added Article 3154(a) to the Civil Statutes (text set out following Article 13.34), and enacted the provisions originally incorporated in Article 3158a of the Civil Statutes (text set out following Article 13.34).*

### Art. 1.01a. Definitions

(a) As used in this code, the term "qualified voter" or "qualified elector" means a person who meets all qualifications and requirements for voting as prescribed in Section 34 of this code.<sup>1</sup>

(b) As used in this Code, the terms "watcher," "poll watcher," and "supervisor" are synonymous. Wherever the term "supervisor" is used, it shall be construed to mean a watcher appointed in accordance with the provisions of this Code.

(c) The United States decennial census of date immediately preceding the action in question shall be the basis for determining population under any provision of this Code.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 2; Acts 1967, 60th Leg., p. 1860, ch. 723, § 2, eff. Aug. 28, 1967.]

<sup>1</sup> Article 5.02.

### Art. 1.02. County Judge Failing to Act

Whenever, by this title, any duty is devolved upon a county judge, and that office is vacant, or such officer from any cause fails to perform such duty, any two (2) or more of the county commissioners of the county may and shall perform such duty.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 2.]

### Art. 1.03. Secretary of State as Chief Election Officer

Subd. 1. The Secretary of State shall be the chief election officer of this state, and it shall be his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. In carrying out this responsibility, he shall cause to be prepared and distributed to each

county judge, county tax assessor-collector, and county clerk, and to each county chairman of a political party which is required to hold primary elections, detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of each such respective officer. Such directives and instructions shall include sample forms of ballots, papers, documents, records and other materials and supplies required by such election laws. He shall assist and advise all election officers of the state with regard to the application, operation and interpretation of the election laws.

Subd. 2. At least thirty days before each general election, the Secretary of State shall prescribe forms of all blanks necessary under this code and shall furnish same to each county clerk. The Secretary of State shall at the same time certify to each county clerk a list of all the candidates who have been nominated for state and district offices and all other candidates whose names have been certified to the Secretary of State to be placed on the general election ballot.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 3; Acts 1963, 58th Leg., p. 1017, ch. 424, § 3; Acts 1967, 60th Leg., p. 1860, ch. 723, § 3, eff. Aug. 28, 1967.]

#### Art. 1.04. To Certify Death of Officer

When any state or district officer, member of Congress, or member of the Legislature shall die, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the Secretary of State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 4.]

#### Art. 1.05. Ineligibility

No person shall be eligible to be a candidate for, or to be elected or appointed to, any public office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state and is under none of the disabilities for voting which are stated in Article VI, Section 1 of the Constitution of Texas on the date of his appointment or of the election at which he is elected, and unless he will have resided in this state for a period of twelve months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applica-

ble date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

The foregoing requirements shall not apply to any office for which the Constitution or statutes of the United States or of this state prescribe qualifications in conflict herewith, and in case of conflict the provisions of such other laws shall control.

Except as provided in Section 104 of this code,<sup>1</sup> no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state, shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 5; Acts 1963, 58th Leg., p. 1017, ch. 424, § 4; Acts 1967, 60th Leg., p. 1861, ch. 723, § 4, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.22.

#### Art. 1.05-1. Eligibility of Candidates for City Office

No person shall be ineligible to be a candidate for any elected public office of any city, regardless of its class, by virtue of his age or length of residency within the city, who is above the age of twenty-one (21), is a qualified elector, and has resided twelve (12) months next preceding the election within the city limits of such city.

[Acts 1971, 62nd Leg., p. 2453, ch. 793, eff. Aug. 30, 1971.]

*Article 1.05-1 was not enacted as part of the Election Code of 1951.*

#### Art. 1.06. Ineligibility Bars

Neither the Secretary of State nor any county judge of this state, nor any other authority authorized to issue certificates, shall issue any certificate of election or appointment to any person elected or appointed to any office in this state, who is ineligible to hold such office under the Constitution of this

state or under Section 5 of this code<sup>1</sup> or any other applicable statute.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 6; Acts 1967, 60th Leg., p. 1862, ch. 723, § 4a, eff. Aug. 28, 1967.]

<sup>1</sup> Article 1.05.

#### Art. 1.07. Injunction May Issue

The district court shall have authority to issue writs of injunction and all other necessary process at the suit of any interested party, or of any voter, to enforce the provisions of the above two sections and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this state and all cases filed hereunder shall have first right of precedence upon trial and appeal.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 7; Acts 1967, 60th Leg., p. 1862, ch. 723, § 5, eff. Aug. 28, 1967.]

#### Art. 1.08. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 5, 121(a), eff. Aug. 23, 1963

### CHAPTER TWO. TIME AND PLACE

#### Article

- 2.01. Time and Place.
- 2.01a. Other Elections on a Primary Election Day Prohibited.
- 2.02. Formation of Election Precincts; Consolidation for Certain Elections.
- 2.03. Held in Public Buildings.
- 2.04. County Election Precincts Formed by Commissioners Court.
- 2.04a. County Election Precinct Maps Furnished to Secretary of State.
- 2.05. Election Precincts for Municipal Elections.
- 2.06. Where to Vote.
- 2.06-1. Municipal and School District Election Dates for 1973.

#### Art. 2.01. Time and Place

A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1964, and every two years thereafter, at such places as may be prescribed by law after notice as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m.; provided, however, that in any county having a population of less than one hundred thousand, according to the last preceding federal census, the polls may be opened one hour later at eight o'clock a. m. on order of the commissioners court of such county duly entered in the minutes thereof; and provided, further, that in any county having a population of one million or more, according to the last preceding federal census, the polls may be opened one hour earlier at six o'clock a. m. on order of the commissioners court of such county entered in the minutes thereof. The foregoing authority of the commissioners court shall extend to all elections held within the county, by whatever authority the election may be ordered, but the court may exercise this authority with respect to such elections as it deems necessary or desirable without advancing or retarding the opening hour for other elections, subject to the requirement that the court's order must apply uniformly to comparable types of elections held on the same day; and the order shall specify the elections to which it applies. The election shall be held for one day only.

All persons who are within the polling place and all persons who are waiting to enter the polling place at seven o'clock p. m. shall be allowed an opportunity to present themselves for voting in the same manner as if they had appeared and offered themselves for voting during regular voting hours. The presiding judge shall take necessary precautions to prevent voting by any person not present and waiting to vote at the time for official closing of the polls. If feasible, all persons waiting to vote at the time for official closing of the polls shall be required to enter the polling place, and the door to the polling place shall be closed and locked, and each such person shall remain inside the polling place until he has voted. If such procedure is not feasible, numbered identification cards or tokens shall be distributed to identify those persons waiting to vote at the time for official closing of the polls.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 9; Acts 1961, 57th Leg., p. 125, ch. 68, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 6.]

#### Art. 2.01a. Other Elections on a Primary Election Day Prohibited

No general or special election of any nature may be held on the same day as a primary election provided for in Section 181 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2662, ch. 878, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Article 13.03.

#### Art. 2.02. Formation of Election Precincts; Consolidation for Certain Elections

Unless a specific statute provides otherwise, the following rules shall govern the establishment of election precincts and the designation of polling places for the conduct of the various kinds of elections held within this state.

(a) County-wide elections held at the expense of the county. In general elections for state and county officers, special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), and all other county-wide elections held at the expense of the county, the election precincts shall be the regular election precincts established by the commissioners court pursuant to Section 12 of this Code.<sup>1</sup>

(b) Municipal elections. The governing body of each incorporated city or town shall establish the election precincts and designate the polling places for elections held by such city or town, in accordance with the provisions of Section 13 of this Code.<sup>2</sup>

(c) Elections held by other political subdivisions. In elections held by other political subdivisions (including but not limited to school districts, junior college districts, districts created pursuant to Article III, Section 52 or Article XVI, Section 59 of the Constitution of Texas, and other similar districts), the governing body of the political subdivision shall establish the

election precincts and designate the polling places for elections held by such subdivision.

(d) Elections held by the county, which affect another political subdivision. In any election called by the commissioners court or the county judge in connection with or relating to the creation, organization, reorganization, functioning or existence of a municipality or of a political subdivision described in Paragraph (c) of this section, the authority calling the election shall designate the election precincts and the polling place in each precinct for such election.

(e) Other elections held by the county. In any other special election called by the commissioners court or the county judge which is ordered for only part of the county, the authority calling the election shall designate the election precincts and the polling place in each precinct for such election.

(f) Primary elections. In all primary elections held by political parties for nominating candidates to be voted on at general and special elections held at the expense of the county, the election precincts shall be the county election precincts established by the commissioners court pursuant to Section 12 of this Code.

(g) In any election for which the election precincts are required to be those formed under the provisions of Section 12 of this code, if in any county there is no local office or proposition to be voted on by the voters of only that county or a part of that county, the authority holding the election may combine any two or more regular election precincts into consolidated precincts for such election in that part of the county having no such local office or proposition to be voted on if it appears that the voters included within each consolidated precinct can be adequately and conveniently served at one polling place; provided, however, that there shall always be at least one consolidated precinct wholly within each commissioners precinct of the county.

(h) All election precincts, by whatever authority established, shall be described by natural or artificial boundaries or survey lines, and shall be designated by name or number. There shall be one polling place, and no more, for each election precinct, and the notice of the election shall state the location of the polling place in each precinct.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 10; Acts 1963, 58th Leg., p. 1017, ch. 424, § 7; Acts 1967, 60th Leg., p. 1862, ch. 723, § 6, eff. Aug. 28, 1967.]

<sup>1</sup> Article 2.04.

<sup>2</sup> Article 2.05.

#### Art. 2.03. Held in Public Buildings

(a) In all cases where it is practicable to do so, all elections—general, special, or primary—shall be held in some schoolhouse, fire station, or other public building within the limits of the election precinct in

which such election is being held. No charge shall be made for the use of such building, except that any additional expense actually incurred by the authorities in charge of the building on account of the holding of the election therein shall be repaid to them by the authority liable for the expenses of holding the election under the existing law. The authority liable for the expenses of the election may demand an itemized statement of the additional expense incurred for use of the building before making its remittance for such expense. If no public building is available, the election may be held in some other building, and any charge for its use shall be paid as an expense of the election.

(b) The commissioners court of any county in this state is authorized to make the necessary expenditure from the permanent improvement fund of the county to construct or purchase a suitable building for holding elections in each precinct formed by the commissioners court for which no other public building is available. The building shall be made available without cost for the holding of any general, special, or primary election held within territory embracing the location of the building upon the request of the authority conducting the election, except that the county shall be reimbursed for any additional expense actually incurred on account of holding the election therein. If more than one authority requests the use of the building for the same day, the commissioners court shall determine within its discretion which authority shall be permitted to use it if all elections for which its use is requested for the same day cannot be held in the building simultaneously. The commissioners court may permit the building to be used for purposes other than the holding of elections, either with or without charge, when it is not being used for that purpose. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 11; Acts 1965, 59th Leg., p. 1314, ch. 603, § 1; Acts 1967, 60th Leg., p. 1862, ch. 723, § 6a, eff. Aug. 28, 1967.]

#### Art. 2.04. County Election Precincts Formed by Commissioners Court

(a) Each county shall be divided into convenient election precincts by the Commissioners Court of the county, each of which precincts shall be differently numbered and described by natural or artificial boundaries or survey lines by an order entered upon the minutes of the Court. At any July or August term, the Court may make such changes in the election precincts as they deem proper, by such order entered upon the minutes of the Court. When such an order is entered, they shall immediately thereafter publish in some newspaper in the county for three consecutive weeks a notice of the entry of such order, giving a brief description in general terms of the changes made, without the necessity of including in such notice the field notes or other detailed description of the precinct boundaries. If there be no newspaper in the county, then a copy of such order shall be posted in some public place in each election precinct in the county which is affected by the order.

(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the commissioners court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this section. Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code,<sup>1</sup> the maximum number of voters shall be 3000. There shall be a minimum of one election precinct wholly contained within each commissioners precinct.

(c) In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct unless there shall reside in said ward more than two thousand qualified voters. In such cities and towns, no precinct shall be made out of parts of two wards; and no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed within the city or town, and the finding of the Commissioners Court shall be conclusive.

(d) In cities, towns and villages of less than ten thousand inhabitants, election precincts may be formed without regard to the wards or the corporate limits of the city, town or village.

(e) Changes in election precincts shall not become operative in the holding of elections until the beginning of the following voting year. The Commissioners Court shall cause to be made out and delivered to the County Tax Collector before the first day of each September a certified copy of such last order for the year following; provided, however, that any order entered during the month of September, as provided in Paragraph (b) of this Section, shall be delivered to the Tax Collector forthwith.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 12; Acts 1963, 58th Leg., p. 1017, ch. 424, § 7; Acts 1965, 59th Leg., p. 1552, ch. 678, § 1, eff. June 18, 1965; Acts 1967, 60th Leg.,

p. 1863, ch. 723, § 7, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1408, ch. 542, § 4, eff. Aug. 27, 1973.]

<sup>1</sup> Articles 7.14, 7.15.

#### Art. 2.04a. County Election Precinct Maps Furnished to Secretary of State

Subd. 1. Between September 1, 1971, and January 1, 1972, each county clerk in the State shall furnish to the Secretary of State a map of his county showing the boundaries of the county election precincts as they exist under the most recent orders of the County Commissioners Court, if such a map is available. The map may be in multiple sections. It shall show roads, streets, streams, city boundaries, and other natural or artificial landmarks which are used as boundary lines for the precincts, in sufficient detail and with sufficient designation by number, name, or other means of identification to depict the precinct boundaries in an accurate and understandable manner.

Subd. 2. When the Commissioners Court makes any changes in the county election precincts by order entered on or after September 1, 1971, within four months after the entry of the order the county clerk shall furnish to the Secretary of State a map depicting the changes in the manner described in Subdivision 1 of this section, where such a map is available.

Subd. 3. The Secretary of State shall file and preserve as a public record each map received under the provisions of this section for a period of 10 years from the date on which it is filed, after which time it may be transferred to the records management division of the State Library for further retention for a period of 20 years. At the expiration of 30 years from the date of filing by the Secretary of State, the State Librarian may dispose of the maps in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959. [Acts 1971, 62nd Leg., p. 46, ch. 24, § 1, eff. March 18, 1971.]

#### Art. 2.05. Election Precincts for Municipal Elections

The election precincts for municipal elections and the location of the polling place in each precinct shall be designated by the governing body of the municipality. The governing body may combine two or more county election precincts into one municipal precinct, but shall not include parts of one county precinct in more than one municipal precinct. The certified list of qualified voters for all county election precincts in which voters reside who are to vote at a polling place designated by the governing body shall be used at such polling place. In all cities and towns in which the number of voters at the last general municipal election does not exceed four hundred in number, only one polling place shall be opened at any municipal election; and all officers of such cities and towns to be elected shall be voted for at such polling place.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 13; Acts 1963, 58th Leg., p. 1017, ch. 424, § 7.]

**Art. 2.06. Where to Vote**

Except as permitted in Sections 48a and 50a of this code,<sup>1</sup> all voters shall vote in the election precinct in which they reside.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 14; Acts 1971, 62nd Leg., p. 2509, ch. 827, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Articles 5.16a and 5.18a.

**Art. 2.06-1. Municipal and School District Election Dates for 1973**

All municipal and school district elections in which candidates are to be running for office, including without limitation elections in home rule cities and independent, municipal, and county school districts, scheduled on the date of passage of this Act to be held within 14 days of November 6, 1973, may be held on November 6, 1973, if the governing body of the municipality or school district so decides. If the governing body changes the date of the election as authorized by this Act, it may set the date of any second or runoff election which may be necessary for any date not earlier than the 14th day after the first election and not later than the latest date which would have been permissible if the date of the first election had not been changed. This Act shall make no change in the term of office or commencement thereof in any election affected hereby. The terms of this Act shall apply to 1973 elections only, and shall have no effect on elections in any subsequent year.

[Acts 1973, 63rd Leg., p. 1083, ch. 418, eff. June 14, 1973.]

**CHAPTER THREE. OFFICERS OF ELECTION**

Article

- 3.01. Appointment of Election Officers.
- 3.02. Duties and Working Hours of Clerks.
- 3.03. Qualifications of Judges, Clerks and Watchers.
- 3.04. Disqualifications.
- 3.05. Appointment of Watchers.
- 3.06. Watchers at Elections on Questions or Propositions.
- 3.07. Service, Duties, and Privileges of Watchers.
- 3.08. Pay of Judges and Clerks.
- 3.09. Precinct Judges Served.
- 3.09a. School of Instruction for Election Officers.

**Art. 3.01. Appointment of Election Officers**

(a) For county elections. The commissioners court at its July term shall appoint from among the citizens of each election precinct one qualified voter as presiding judge of elections held at the expense of the county in that precinct and one qualified voter as alternate presiding judge, each of whom shall continue to act until his successor is appointed. Whenever a vacancy arises in either of such offices, the commissioners court may fill the vacancy at any regular or special term of court. All orders appointing judges and alternates shall be entered of record. Each presiding judge shall appoint two qualified voters, who are residents of the precinct, to serve as election clerks, and shall appoint for each election as many additional clerks as he deems necessary for the proper conduct of the election, not to exceed the maximum number authorized by the commissioners

court. The commissioners court shall fix the maximum number of clerks which may be appointed for each precinct, and may fix different maximums depending on the type of election. The clerks shall be selected from different political parties, when practicable. The chairman of the county executive committee of each of the two parties whose candidate for Governor received the most votes for Governor in the last prior general election may submit a list of not less than two qualified nominees who are members of that party to each election judge at least 30 days prior to the date of a general election or 10 days prior to the date of a special election. If any such list is submitted to him, the election judge shall appoint at least one clerk from each list submitted. For the purpose of this section, the term "members of that party" means persons who affiliated with the party in the manner prescribed in Section 179a of this code<sup>1</sup> during the last preceding set of primary elections and conventions.

(b) For municipal elections. If a city charter provides the method for appointing election officers for elections held by the city, its provisions shall control, but there shall be at least three election officers at each polling place. Unless a different method is prescribed by the city charter, the mayor, or if he fails to do so, then the governing body of the municipality, shall appoint for each municipal election precinct a presiding judge and an alternate presiding judge for elections held by such municipality and shall fix the maximum number of clerks which may be appointed to serve in each precinct, which shall be not less than two, and the presiding judge for each precinct shall appoint two clerks, and as many additional clerks within the authorized limit as he deems necessary for the proper conduct of the election. In any city in which political parties nominate candidates for municipal offices, the election officers shall be selected from different political parties when practicable.

(c) For elections held by other political subdivisions. In any election held by a political subdivision other than a city or a county, the statutes pertaining to the particular type of election shall govern the appointment of election officers if such statutes provide for their appointment. In the absence of such provisions, the governing body of the subdivision shall appoint a presiding judge and an alternate presiding judge for each election precinct of the subdivision and shall fix the maximum number of clerks which may be appointed to serve in each precinct, which shall be not less than two; and the presiding judge for each precinct shall appoint two clerks and as many additional clerks within the authorized limit as he deems necessary for the proper conduct of the election.

(d) For primary elections. The primary elections of a political party shall be conducted in each precinct by a presiding judge, to be appointed by the chairman of the county executive committee of the party, with the assistance and approval of a majority of the members of the county executive committee.

The presiding judge shall select two clerks to assist in conducting the election; and additional clerks may be appointed under such rules as may be made by the county executive committee. An alternate presiding judge shall be appointed for each precinct in like manner as the presiding judge.

(e) Alternate judge to preside. Whenever the regularly appointed presiding judge is unable to serve at an election, the alternate presiding judge shall serve as the presiding judge for that election. In any election conducted by the regularly appointed presiding judge, he shall appoint the alternate presiding judge as one of the clerks to serve at such election.

(f) Appointment of election officers for certain elections ordered by county officers. The election judges appointed under Paragraph (a) of this Section shall hold all elections ordered by the Governor or by the County Judge, county Commissioners Court, or other county authority, which are required to be held in the regular county election precincts established pursuant to Section 12 of this Code.<sup>2</sup> In any election ordered by the Commissioners Court, the County Judge, the county board of school trustees, or other county authority, which are not required to be held in the regular county election precincts or for which other election precincts may be designated under the provisions of Section 10 of this Code, the statutes pertaining to the particular type of election shall govern the appointment of election officers if such statutes provide for their appointment. In the absence of such provisions, the authority calling the election shall appoint a presiding judge and an alternate presiding judge for each election precinct and shall fix the maximum number of clerks which may be appointed to serve in each precinct, which shall not be less than two; and the presiding judge for each precinct shall appoint two clerks and as many additional clerks within the authorized limit as he deems necessary for the proper conduct of the election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 15; Acts 1963, 58th Leg., p. 1017, ch. 424, § 8; Acts 1965, 59th Leg., p. 1552, ch. 678, § 2, eff. June 18, 1965; Acts 1967, 60th Leg., p. 1863, ch. 723, § 8, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 2, eff. Sept. 1, 1973.]

<sup>1</sup> Article 13.01a.

<sup>2</sup> Article 2.04.

### Art. 3.02. Duties and Working Hours of Clerks

In all elections, general, special, or primary, the presiding judge shall be in charge of the management of the polling place and the conduct of the election. He shall designate the working hours and assign the duties to be performed by the clerks. Clerks may be assigned to work for different lengths of time and to begin work at different hours during the day while the polls are open or during the time necessary for counting the ballots after the polls are closed. Clerks who begin work at any time before closing of the polls shall remain on duty without leaving the polling place while the polls are open, except for such periods of absence for meals and

other necessary reasons as may be permitted by the presiding judge.

One or more clerks shall be assigned to assist in checking the names of voters on the list of qualified voters, keeping the poll list, and performing such other duties as are necessary in receiving the voters and supervising the deposit of the voted ballots. At every election there shall be kept a poll list in the number of copies required by law, consisting of one original and carbon copies thereof, on which an election officer shall enter the name of each voter at the time he votes.

In elections where paper ballots are used, the ballots shall be counted by one or more sets of counting officers, each set to consist of one judge or clerk who shall read the ballots, and one or more clerks who shall enter the votes on tally lists prepared for the election. As a safeguard in the accuracy of the tallying, the votes shall be entered on three original tally lists, and during the progress of the counting the lists shall be compared and errors and discrepancies shall be corrected, and at the close of the counting the tally clerks shall certify officially to the correctness of the lists.

The clerks may be assigned to perform such other duties as the presiding judge shall direct.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 16; Acts 1963, 58th Leg., p. 1017, ch. 424, § 8.]

### Art. 3.03. Qualifications of Judges, Clerks and Watchers

(a) All judges and clerks of any general, special, or primary election shall be qualified voters of the election precinct in which they are named to serve. Unless otherwise provided in a statute pertaining to the specific type of election being held, in any general, special, or primary election all watchers shall be qualified voters of the county if the election is countywide, and shall be qualified voters of the city or other political subdivision in which the election is held if less than countywide, but it shall not be necessary that they reside within the election precinct in which they are named to serve.

(b) No person shall serve as a judge or a clerk in any general, special, or primary election who is employed by any candidate whose name appears on the ballot in that election either for a public office or for the party office of county chairman, or who is related to such candidate within the third degree either by affinity or consanguinity. Within the meaning of this section, a governmental employee is employed by the officer or officers who head the department or agency in which he is employed.

(c) No watcher shall be an employee or employer of any election judge or clerk in the election precinct in which he is named to serve or related to any such election officer within the third degree either by affinity or consanguinity.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 17; Acts 1963, 58th Leg., p. 1017, ch. 424, § 9; Acts 1967, 60th Leg., p. 1864, ch. 723, § 9, eff. Aug. 28, 1967.]

**Art. 3.04. Disqualifications**

Subd. 1. Except as otherwise provided herein, no one who holds an office of profit or trust under the United States or this state, or any city or town in this state, or within 30 days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for public office, or who is not a qualified voter, shall act as judge, clerk, or watcher of any election, general, special, or primary. The holding of a nonlucrative office does not disqualify a person to act as a judge, clerk, or watcher in any election other than an election held by a county, city, school district, or other political subdivision of which he is an officer. The holding of a lucrative office, except notary public, disqualifies the holder to act as a clerk or watcher in any election held by a county, city, school district, or other political subdivision of which he is an officer or in a primary election at which nominations for offices of that political subdivision are to be made, but does not disqualify him to serve in any other election. As used in this subdivision, the term "officer of a county" includes only those officers who serve a county or one of its precincts in its capacity as a political subdivision.

Subd. 2. The offices referred to in Subdivision 1 of this section do not include offices of a political party, and no one shall be disqualified to act as judge, clerk, or watcher at an election by reason of his holding or being a candidate for the office of county chairman or precinct chairman or other office of a political party.

Subd. 3. No one shall act as chairman or as member of any district, county, or city executive committee of a political party who is not a qualified voter, or who is a candidate for public office, or who holds any office of profit or trust, either under the United States or this state, or any city or town in this state.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 18; Acts 1963, 58th Leg., p. 1017, ch. 424, § 9; Acts 1969, 61st Leg., p. 2662, ch. 878, § 3, eff. Sept. 1, 1969.]

**Art. 3.05. Appointment of Watchers**

(a) By political parties. The chairman of the county executive committee for each political party that has a nominee or nominees on the official ballot at any general or special election, or, if the chairman failed to act, any three members of such committee, may appoint one watcher for each election precinct by delivering to the watcher, prior to the day of the election, a written certificate of his appointment setting forth the name of the person appointed and the number of the precinct where such watcher is to serve. The certificate shall bear the signature of the chairman or committee members making the appointment together with the signature of the appointee.

(b) By candidates. Any candidate whose name appears on the official ballot of any general, special, or primary election for any public office may appoint two watchers for each election precinct and

place of absentee voting in which the name of such candidate appears on the ballot, by delivering to each such watcher appointed by him, a certificate of his appointment setting forth the name of the person appointed and the number of the precinct where such watcher is to serve. The certificate shall be signed personally by the candidate making the appointment and shall also bear the signature of the appointee. The assistant campaign manager of any candidate for state or district office, designated in accordance with Section 238 of this Code,<sup>1</sup> may act on behalf of the candidate he represents in the appointment of watchers in the county for which he has been named assistant campaign manager, and certificates executed by him shall bear his signature as agent for the candidate, in lieu of the candidate's signature.

(c) By voters. In any general, special, or primary election, the qualified voters in an election precinct may appoint two watchers for that precinct on behalf of any announced candidate who does not appoint or join in the appointment of a watcher or watchers for such precinct under the provisions of Paragraph (b) of this section, by delivering to each watcher appointed by them, prior to the day of the election, a certificate of appointment setting forth the name of the person appointed, the number of the precinct where such watcher is to serve, and the name of the candidate on whose behalf the appointment is made. The certificate shall be signed by fifty qualified voters or five per cent of the qualified voters of the precinct as determined by the number of voters appearing on the list of qualified voters, whichever is the lesser number, and shall also bear the signature of the appointee; and the candidate, or his assistant campaign manager for the county in which the precinct is located if he be a candidate for a state or district office, shall endorse thereon a signed statement that the appointment is made with his consent. To every voter who signs such certificate shall be administered an oath, which shall be reduced to writing and attached to or made a part of the certificate, that the signer is a qualified voter at the election and in the precinct for which the appointment is made. One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 19; Acts 1963, 58th Leg., p. 1017, ch. 424, § 10; Acts 1973, 63rd Leg., p. 1111, ch. 423, § 13, eff. June 11, 1973.]

<sup>1</sup> Article 14.02.

**Art. 3.06. Watchers at Elections on Questions or Propositions**

Whenever any question or proposition is to be voted on at any election in this state, voters favoring the proposition may procure the appointment of two watchers, and voters opposing the proposition may procure the appointment of two watchers, for each election precinct in which the proposition is to be voted on, by complying with the procedure set forth in this section. A petition signed by fifty qualified voters or five per cent of the qualified voters of the

precinct as determined by the number of voters appearing on the list of qualified voters, whichever is the lesser number, shall state whether the signers favor or oppose adoption of the proposition, and shall state the name and address of the person or persons whom they wish to be appointed. To every voter who signs the petition shall be administered an oath, which shall be reduced to writing and attached to or made a part of the petition, that the signer is a qualified voter at the election and in the precinct for which the appointment is requested. One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered.

In state-wide elections, and in all elections ordered by the commissioners court or the county judge, the petition shall be presented to the county judge. In municipal elections, it shall be presented to the mayor, and in all other elections it shall be presented to the presiding officer of the board or body ordering the election. The petition shall be presented to the proper officer not later than the third day prior to election day. If the officer to whom the petition is presented finds that it complies with the foregoing requirements, that the signers of the petition are good-faith representatives of the side of the issue which they purport to represent, and that the person or persons whose appointment is requested are qualified to serve as watchers, he shall issue a certificate of appointment to each of the persons whose appointment is requested, setting forth the name of the person appointed and the number of the precinct where such watcher is to serve. The certificate shall bear the signature of the appointing officer together with the signature of the appointee.

Not more than two watchers representing the same side of a question or proposition shall be appointed in a precinct. If more than one petition is filed by voters representing the same side of the issue, preference shall be given in accordance with the order of filing.

The provisions of this section shall not apply to referendum propositions submitted at party primary elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 20; Acts 1963, 58th Leg., p. 1017, ch. 424, § 10.]

#### **Art. 3.07. Service, Duties, and Privileges of Watchers**

(a) Each watcher shall be present at the polling place on election day when the polls are opened, and shall remain on duty without leaving the polling place until the polls are closed, except for such periods of absence for meals or other necessary reasons as may be permitted by the presiding judge. If the presiding judge permits the clerks to leave the polling place for meals or other necessary reasons during the time the polls are open, he must accord the same privilege to watchers. If the presiding judge adopts a general rule for the clerks and watchers which would prevent a watcher who is a resident of some other election precinct from leaving

the polling place in order to vote in the precinct of which he is a resident, the presiding judge nevertheless must permit such watcher to leave the polling place, at some time within the first two hours after the polls open, for a sufficient length of time to enable him to vote in the precinct in which he resides. A watcher who leaves the polling place without proper authorization while the polls are open shall not be permitted to resume service. A watcher who leaves the polling place after the polls are closed shall be permitted to resume his service at any time thereafter until the election officers have completed their duties.

(b) On election day, the watcher shall present his certificate of appointment to the presiding judge of the precinct where he is to serve, and the presiding judge shall require the watcher to countersign the certificate to make certain he is the identical person referred to in the certificate. The presiding judge shall preserve the certificate and deliver it with other records of the election to the officer who has custody of the voted ballots, to be preserved by him for the length of time provided by law for preservation of the voted ballots.

(c) Before commencing his services, each watcher shall take an oath to be administered by the presiding judge, that he will mention and note any errors he may see in testing the voters, or counting the votes, or making out the returns, that he will well and truly discharge his duties as watcher impartially, and will report in writing all violations of the law and unrectified irregularities that he may observe to the authority which canvasses the returns of the election, and, if he deems it desirable, to the next grand jury.

(d) Each watcher appointed in accordance with this code shall be permitted to sit conveniently near the judges or clerks so that he can observe the conduct of the election, including but not limited to the reading of the ballots, the tallying and counting of the votes, the making out of the returns, the locking of the ballot boxes, their custody and safe return. He shall also be permitted to be present when assistance is given by any election judge in the marking of the ballot of any voter not able to mark his own ballot, to see that the ballot is marked in accordance with the wishes of the voter, but he must remain silent except in cases of irregularity or violation of the law. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. The watcher shall call the attention of officers holding the election to any fraud, irregularity or mistake, illegal voting attempted, or other failure to comply with the laws governing such election at the time it occurs, if practicable and if he has knowledge thereof at the time, and such complaint shall be reduced to writing and a copy delivered to the election judge.

(e) No watcher shall give any advice of any kind to any voter, or hold any conversation or discussion with any voter, or communicate with or signal to any voter in any manner, or interfere with any voter in any manner whatsoever.

(f) In addition to the foregoing duties and privileges, each watcher serving at an election where voting machines are used shall also have the duties and privileges of watchers as set forth in Section 79 of this code.<sup>1</sup>

(g) Watchers appointed to observe absentee voting may be appointed in the same manner as watchers appointed to serve at regular polling places, and may serve at such hours as they desire.

(h) The authority holding the election shall not pay for the services of watchers, but they may be paid by the interest they represent.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 21; Acts 1963, 58th Leg., p. 1017, ch. 424, § 10; Acts 1967, 60th Leg., p. 1865, ch. 723, § 10, eff. Aug. 28, 1967.]

<sup>1</sup> Article 7.14.

#### Art. 3.08. Pay of Judges and Clerks

(a) In all elections, general, special, or primary, by whatever authority conducted, the rate of pay for judges and clerks of the election shall be determined by the appropriate authority, but shall not exceed two dollars per hour for each judge or clerk. No judge or clerk shall be paid for more than one hour of work before the polls open. In precincts where voting machines are used, no judge or clerk shall be paid for any period of time subsequent to two hours after the official time for closing the polls or subsequent to two hours after voting is concluded by all voters offering themselves for voting during regular voting hours, whichever is the later. The judge who delivers the returns of election may be paid an amount not to exceed five dollars for that service; provided, also, he shall make returns of ballots, ballot boxes, and election supplies not used when he makes returns of the election.

(b) In elections held at the expense of a county, the rate of pay shall be determined by the commissioners court of the county where such services are rendered. In elections held at the expense of a city, school district, or other political subdivision, the governing body of the city, district or political subdivision shall determine the rate. In primary elections, the rate shall be determined by the county executive committee of the party conducting the primary election.

(c) The compensation of judges and clerks of general and special elections shall be paid by the authority responsible for the expenses of the election, upon presentation of claims for such services approved in the manner required for other claims against its funds. In a joint election, the total pay for the judges and clerks may not exceed the maximum specified in Subsection (a) of this section. However, if the election judge delivers the returns of election and the election supplies to different locations for the different election authorities, he shall be paid by

each election authority for each delivery the amount specified in Subsection (a) of this section.

(d) The provisions of this section shall control over all other statutes relating to pay of election judges and clerks in any type of election whatsoever, and all other statutes are hereby repealed to the extent of any conflict with this section.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 22; Acts 1963, 58th Leg., p. 1017, ch. 424, § 11; Acts 1965, 59th Leg., p. 1552, ch. 678, § 3, eff. June 18, 1963; Acts 1967, 60th Leg., p. 1886, ch. 723, § 11, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1509, ch. 453, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1564, ch. 473, § 1, eff. June 10, 1969.]

#### Art. 3.09. Precinct Judges Served

Precinct judges for all general elections shall be served with copies of the order of the Commissioners Court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such service shall be made by the clerk of said court by registered mail within twenty (20) days after the entry of the order.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 23.]

#### Art. 3.09a. School of Instruction for Election Officers

(a) Prior to each general election, or at such other time or times as may be deemed desirable, the county clerk of each county of the state is authorized to conduct, with the approval of the county judge, a school or schools of instruction for the election judges and clerks appointed to serve in elections held by the county; and upon direction by the commissioners court, the county clerk shall be required to conduct such school. Persons appointed to serve as watchers at the election and any other interested members of the public shall also be permitted to attend the school. When such a school is held, the county clerk shall notify each presiding judge of the time and place at which it will be held, and it shall be the duty of the presiding judge to give like notice to those persons who will serve as clerks at the election in his precinct. The county clerk shall also notify the county chairman of each political party in the county, so that the county chairman may have an opportunity to notify persons who will serve as watchers for the party.

(b) Upon request, the Secretary of State and the Attorney General are authorized to cooperate with the county clerk in furnishing the clerk with any informational or instructional material which they are able to supply, for use in conducting the school.

(c) The provisions of this section are cumulative of the provision in Section 79 of this code<sup>1</sup> which requires a school of instruction to be held for election officers before each election at which voting machines are to be used, and nothing in this section shall be construed to alter or amend Section 79 of this code.<sup>1</sup>

[Acts 1967, 60th Leg., p. 1866, ch. 723, § 12, eff. Aug. 28, 1967.]

<sup>1</sup> Article 7.14.

## CHAPTER FOUR. ORDERING ELECTIONS

### Article

- 4.01. Proclamation by Governor.
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### Art. 4.01. Proclamation by Governor

Notice shall be given to the people of all elections for State and district officers, electors for President and Vice-president of the United States, members of Congress, members of the Legislature, and all officers who are elective every two (2) years. Such notices shall be by proclamation by the Governor ordering the election, not less than thirty-five (35) days before the election, issued and mailed to the several county judges.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 24.]

### Art. 4.02. Order by County Judge

The county judge, or if his office is vacant or if he fails to act, then two (2) of the county commissioners, shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the day of election, the office or offices to be filled by the election or the question to be voted on, or both, as the case may be.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 25.]

### Art. 4.03. Writs of Election

Not less than 15 days before any general or special election, the county judge shall mail or deliver a copy of the writ of election to the presiding judge of each election precinct in which the election is ordered to be held, and shall notify him in writing of his duty to hold the election in that precinct and of the location of the polling place and the hours during which the polls shall be kept open.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 26; Acts 1969, 61st Leg., p. 2662, ch. 878, § 4, eff. Sept. 1, 1969.]

### Art. 4.04. Failure to Order

A failure from any cause, on the part of the Governor, or the county judge or commissioners court, or of both, to order or give notice of any general election shall not invalidate the same if otherwise legal and regular.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 27.]

### Art. 4.05. Notice of Election

Subd. 1. The county judge shall cause notice of each general or special election ordered by him or by

the commissioners court to be given in at least one of the following manners:

(1) by posting a notice of the election in each precinct in which the election is to be held at least 20 days before the election; or

(2) by publishing the notice at least one time, not more than 25 days nor less than 10 days before the election, in at least one daily newspaper published in the county (in the political subdivision or territory in which the election is to be held if the election is less than county-wide), or if there is no daily newspaper published therein, then in a weekly newspaper published therein; or

(3) if there are one or more newspapers published in the county, by issuing the notice in the form of a news release sent to each newspaper published in the county, not more than 25 days nor less than 10 days before the election.

In all cases, a copy of the notice shall also be filed with the county clerk and another copy shall be posted on a bulletin board in the office of the county clerk, at least 20 days before the election. As used herein, the term "newspaper" has the meaning defined in Section 1, Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 28a, Vernon's Texas Civil Statutes).

Subd. 2. The notice of each general or special election shall state the nature and date of the election, the hours during which the polls will be open, and the location of the polling place or places. A notice given in the first manner listed in Subdivision 1 of this section shall state the location of the polling place in the precinct where the notice is posted; all other notices shall state the location of the polling places in all the precincts in which the election is to be held. The notice of a special election shall also state the office or offices to be filled, or the question or questions to be voted on; provided, however, that in the case of an election on proposed constitutional amendments, publication of which amendments is required by Article XVII, Texas Constitution, the notice required by this section need not state the propositions which are to appear on the ballot.

Subd. 3. Notwithstanding the foregoing provisions of this section, where the manner of giving notice for a local option, stock law, bond or tax election, or any other special election is specially provided for by the laws of this state, the notices of election shall be given in compliance with the laws governing each respective election.

Subd. 4. Where notice is given in the first manner listed in Subdivision 1 of this section, the sheriff or a constable shall post the notice and shall make a return on a copy of the notice, showing how and when he executed the notice. Where notice is given in the second manner, the county judge shall file with the county clerk a copy of the notice as published, together with the name of the newspaper or newspapers and the date or dates of publication.

Where notice is given in the third manner, the county judge shall file with the county clerk a copy of the news release together with a list of the newspapers to which it was sent and the date of mailing.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 28; Acts 1969, 61st Leg., p. 2662, ch. 878, § 5, eff. Sept. 1, 1969.]

#### Art. 4.06. Municipal Elections

In all city, town and village elections, the mayor, or if he fails to do so, then the governing body shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and judges and clerks shall each be selected from different political parties when practicable. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 29.]

#### Art. 4.07. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963

#### Art. 4.08. In Case of a Tie

(a) At any election, general or special, if there be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the Constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office, which shall be held not less than twenty nor more than thirty days after the canvass of the election which is declared void. Except as otherwise provided in this section, notice of such other election shall be given and the election shall be held in the same manner as the general or special election in which the tie vote occurred. At such election, only the names of the tying candidates shall be printed on the ballot, and any write-in votes cast for any other person shall be void and shall not be counted for any purpose.

(b) If the tying candidates agree in writing, filed with the returning officer, upon a different method of deciding which of them shall be declared elected, the decision shall be made in that manner and the new election not ordered.

(c) The provisions of this section shall not apply: (1) to any general or special election at which a majority vote is required for election, and for which a runoff election is required when no candidate receives a majority of the votes at the first election, or (2) to any general or special election for which resolution of a tie vote is governed by some other law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 31; Acts 1967, 60th Leg., p. 1867, ch. 723, § 13, eff. Aug. 28, 1967.]

#### Art. 4.09. Special Elections to Fill Vacancies in Public Offices

Sec. 1. Where special elections are authorized by this Act, the officer authorized by law to order elections shall make such order, fixing the time of

the election not less than twenty (20) nor more than ninety (90) days after the first public notice of such order.

Sec. 2. Election to fill unexpired term. Where vacancies which are to be filled by election occur in a civil office, an election shall immediately be ordered to fill the unexpired term.

Sec. 3. Election to unexpired term and to fill term succeeding unexpired term. Where an officer, holding an office the vacancy of which is to be filled by election, is re-elected to a term of office succeeding that of which he is the incumbent, and where, after the re-election of said officer, by reasons of the death or resignation of the officer or otherwise, there is no person legally entitled to fill the office for the unexpired term or to fill the office for the succeeding term to which the former officer was elected to succeed himself, an election shall be immediately ordered to elect a person to fill the unexpired term in said office and to elect a person to fill the term of office succeeding the unexpired term.

Sec. 4. Election on resignation of incumbent of unexpired term. When the incumbent of an office, the vacancy of which is to be filled by election, tenders to the officer authorized by law to receive same a written resignation effective at a future date, an election shall be ordered immediately after acceptance of the resignation to elect a successor to the incumbent to fill the term of office unexpired from and after the effective date of the resignation.

Sec. 5. Election on resignation of officer-elect. When an officer-elect to an office a vacancy in which must be filled by election, tenders to the officer authorized by law to receive the resignation of an incumbent of the office to which said officer-elect was elected, a declaration in writing of his intention not to qualify for the office to which he was elected, an election shall be ordered immediately upon receipt of said written declaration to elect a successor to the incumbent of the office.

Sec. 6. Election on death of officer-elect. When the officer-elect to an office which must be filled by election dies or becomes ineligible to qualify for the office to which he was elected, the proper officer shall immediately order an election to elect a successor to the incumbent of the office.

Sec. 7. Governor may accept resignations. Where no officer is otherwise authorized by law to receive and accept the resignation of an officer, the Governor is hereby designated as the officer to do so, and he is hereby empowered and authorized to receive and accept the resignation of all such officers.

Sec. 8. Poll tax lists delivered by tax collector to board. Whenever a special election or special primary as herein provided or otherwise provided by law shall be called between February 1st and April 1st, the tax collectors of the counties in which such election or primary is to be held shall make up and

deliver to the board charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or have received their certificates of exemption in the form now provided by law, on or before February 20th.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 32.]

#### Art. 4.10. Vacancy; Application to Get on Ballot

Sec. 1. Any person desiring his name to appear upon the official ballot at any special election held for the purpose of filling a vacancy, when no party primary has been held, may do so by presenting his application to the proper authority. Such application shall set forth:

- (a) The name of the office sought;
- (b) His occupation, his postoffice address, and the county of his residence;
- (c) His age, place of birth, kind of citizenship, and length of residence in the county and state.

Sec. 2. Such application must be filed not later than 6 p. m. of the 31st day before any such special election, and shall not be considered filed unless it has actually been received by the officer with whom it is to be filed. The application must be accompanied with a fee of \$1,000 for a statewide office, including without limitation the offices of United States Senator and United States Congressman-at-Large, a fee of \$500 for the district office of United States Representative, a fee of \$150 for the district office of State Senator or State Representative, and a fee of \$10 for a city office. Such fees shall be deposited in the general fund of the state or city, as the case may be.

Sec. 3. The application must be filed with the Secretary of State in the case of a state or district special election and with the City Secretary in the case of a municipal election. The Secretary of State shall upon receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this state, or of the district in the case of the district vacancy, directing that the name of the applicant shall be printed on the official ballot in the column under the title of the office for which he is a candidate.

Sec. 4. The ballot in such special elections shall not bear any party designations but shall be printed otherwise as indicated in Section 61, and shall be marked as indicated in Section 62.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 32a; Acts 1961, 57th Leg., p. 976, ch. 424, § 1; Acts 1969, 61st Leg., p. 2662, ch. 878, § 6, eff. Sept. 1, 1969.]

<sup>1</sup> Article 6.06.

#### Art. 4.11. Special Elections for United States Representative

Subd. 1. In any special election called to fill a vacancy in the office of United States representative

in any congressional district of the state, a majority vote of the electors participating in the election shall be necessary for election. In the event no candidate receives a majority of the votes cast at the first election, the Governor shall, within five days after the results of the election are officially declared, call a second election to be held on a specified day which shall be not less than thirty nor more than forty days after the date of the proclamation or order calling the election. In the second special election the candidates shall be limited to the participants in the first election who received the largest and next largest number of votes at the first election.

Subd. 2. In any special election called to fill a vacancy in the office of United States representative in any congressional district of the state, the filing fee shall be five hundred dollars.

Subd. 3. Whenever there shall be held a special election in any congressional district in this state for the election of United States representative, the commissioners court of each county in such district shall meet within three days after such election is held and canvass the returns thereof.

Subd. 4. When a special election shall have been held for United States representative in any district, the county judge of each county in which such election was held shall, within twenty-four hours after the commissioners court opens the returns and canvasses the result, as provided in Subdivision 3 of this section, make out duplicate returns of the election, one of which he shall immediately transmit to the seat of government of the state, sealed in an envelope, directed to the Secretary of State, and endorsed "Election Returns for \_\_\_\_\_ County, for United States Representative, District \_\_\_\_\_" (filling the first blank with the name of the county and the other blank with the number of the district for which the election was held); and the other of such returns shall be deposited in the office of the county clerk of the county where such election was held. Not later than the seventh day after the election, the day of the election excluded, the Secretary of State, in the presence of the Governor and the citizen appointed under Section 120 of this code,<sup>1</sup> shall open and canvass the returns of the election and declare the results thereof. If any person received a majority of the votes cast at the election, the Governor shall immediately make out, sign and deliver a certificate of election to such person for the unexpired term of the office for which he was a candidate. In the event no candidate received a majority of the votes cast at the election, the Governor shall call a second election as provided in Subdivision 1 of this section; and the Secretary of State shall within five days after the results of the first election are officially declared, certify to the county clerk of each county in the district the names of the two candidates who are eligible to participate in the second election and the clerks shall make up the ballot for election according to the certificate. The results of the second election shall be canvassed and the results

declared in the same manner as herein provided for the first election, and the Governor shall issue to the candidate who receives the largest number of votes in the second election a certificate of election to the unexpired term of the office for which he was a candidate.

Subd. 5. The provisions of this section shall not apply to special elections for the office of congressman-at-large called and held in accordance with Section 177 of this code.<sup>2</sup>

Subd. 6. All special elections called for the purpose of filling vacancies in the offices to which this section applies shall be conducted according to existing law as supplemented by this section, but if there is a conflict between this section and the existing law, the provisions of this section shall prevail.

[Acts 1961, 57th Leg., 2nd C.S., p. 512, ch. 2, § 1; Acts 1967, 60th Leg., p. 1867, ch. 723, § 14, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.38.  
<sup>2</sup> Article 12.02.

**Art. 4.12. Special Elections for Members of the Legislature**

Subd. 1. Whenever there is a special election in any representative or senatorial district in this state for the election of any member of the Legislature, a majority vote of the electors participating in the election shall be necessary for election. If no candidate receives a majority of the votes cast at the first election, the Governor shall, within five days after the results of the election are officially declared, call a second election to be held not less than fifteen nor more than twenty-five days after the date of the proclamation or order calling the election. In the second special election the candidates shall be limited to the participants in the first election who received the largest and next largest number of votes at the first election.

Subd. 2. Whenever there is a special election in any representative or senatorial district in this state for the election of any member of the Legislature, the commissioners court of each county in the district shall meet within three days after the election is held and canvass the returns. The county judge of each county in which the election was held shall, within twenty-four hours after the commissioners court canvasses the result, make out duplicate returns of the election, one of which he shall immediately transmit to the seat of government of the state, sealed in an envelope, directed to the Secretary of State, and endorsed "Election Returns for \_\_\_\_\_ County, for \_\_\_\_\_" (filling the first blank with the name of the county and the other blank with the name of the office for which the election was held); and the other of the returns shall be deposited in the office of the county clerk where the election was held.

Subd. 3. Not later than the seventh day after the election, the day of the election excluded, the Secretary of State in the presence of the Governor and the citizen appointed under Section 120 of this code<sup>1</sup> shall canvass the returns of the election and

declare the results. If one person has received a majority of the votes cast at the election, the Secretary of State shall immediately make out, sign, and deliver a certificate of election to him for the unexpired term of the office for which he was a candidate. If no candidate has received a majority of the votes cast at the election, the Governor shall call a second election as provided in Subdivision 1 of this section; and the Secretary of State shall within five days after the results of the first election are officially declared, certify to the county clerk of each county in the district the names of the two candidates who are eligible to participate in the second election, and the clerks shall make up the ballot for election according to the certificate. Notice of the second election shall be given in the manner provided by law but ten days notice shall be sufficient, and the county judge shall, not later than ten days prior to the election, notify each presiding judge of his duty to hold the election. The returns of the second election shall be canvassed and the results declared in the same manner as provided for the first election, and the Secretary of State shall issue to the candidate who receives the largest number of votes in the second election a certificate of election to the unexpired term of the office for which he was a candidate.

Subd. 4. Notwithstanding any other provision of this code, whenever a vacancy occurs in the office of state representative or state senator in any representative or senatorial district in this state during a regular session of the Legislature and more than twenty-five days before the final date permitted by law for the continuation of the session, or within a period of sixty days prior to the convening of any session of the Legislature, the time intervals specified in this subdivision shall control the election. The proclamation of the Governor ordering the election shall be issued and mailed to the appropriate county judge or judges not less than twenty-one days before the election. If the election is called for a date less than thirty-five days after the date of the order, the application of any person desiring his name to appear on the official ballot at the election must be filed not later than five days after the date of the order, which shall state the deadline for filing applications. If a second election is necessary, it shall be called for a date not less than seven nor more than twenty-five days after the date of the order calling the election. If the first election is called for a date less than thirty days after the date of the election order, fifteen days notice of the election and fifteen days notification to the presiding judges shall be sufficient for that election. In a runoff election, six days notice and notification shall be sufficient. If ballots for absentee voting in either election cannot be made available by the twentieth day preceding the date of the election, absentee voting shall begin as soon after the twentieth day as the ballots are available, and in all events must begin not later than the third day after the date of the Secretary of State's certification of the names of

the candidates to be placed on the ballot or after the date of the order calling the election, whichever is the later, if such third day is less than twenty days prior to the election. Except as modified herein, the election shall be held in accordance with provisions regulating other special elections for the Legislature.

Subd. 5. All special elections called for the purpose of filling vacancies in the offices to which this section applies shall be conducted according to existing law as supplemented by this section, but if there is a conflict between this section and the existing law, the provisions of this section shall prevail. [Acts 1965, 59th Leg., p. 777, ch. 368, § 1; Acts 1967, 60th Leg., p. 1868, ch. 723, § 14a, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.38.

## CHAPTER FIVE. SUFFRAGE

### Article

- 5.01. Classes of Persons Not Qualified to Vote.
- 5.02. Qualification and Requirements for Voting.
- 5.02a. Repealed.
- 5.02b. Expired.
- 5.03. Qualifications for Voting for Bond Issues, Lending Credit, Expending Money, or Assuming Debt.
- 5.04. Affidavit of Voter in Bond Election, Etc.
- 5.05. Absentee Voting.
- 5.05a. Voting by New Residents of State in Presidential Elections.
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- 5.05c. Voting by Persons Having Less than Six Months' Residence in County.
- 5.05d. General Provisions on Voting by Persons not Meeting Full Residence Requirements.
- 5.06. Absentee Ballots.
- 5.07. To Vote in City Elections.
- 5.08. Rules for Determining Residence.
- 5.09. Repealed.
- 5.09a. Registrar of Voters.
- 5.10. Repealed.
- 5.10a. Persons Entitled to Register.
- 5.11. Repealed.
- 5.11a. Period for Registration; Period for which Registration is Effective.
- 5.11a-1. Expired.
- 5.11b. Registration for First Voting Year.
- 5.11b-1. Expired.
- 5.11c. Expired.
- 5.12. Repealed.
- 5.12a. Repealed.
- 5.12b. Repealed.
- 5.13. Repealed.
- 5.13a. Mode of Applying for Registration.
- 5.13b. Information Required on Application.
- 5.14. Repealed.
- 5.14a. Registration Certificate Forms; Information Required on Certificate.
- 5.15. Repealed.
- 5.15a. Registration Record Sheets; Registration Files.
- 5.16. Repealed.
- 5.16a. Correction of Errors on Certificates; Lost Certificates.
- 5.16b. Abolition of Precinct or Alteration of Boundary.
- 5.17. Repealed.
- 5.17a. Challenge of Registration; Appeal.
- 5.18. Repealed.
- 5.18a. Change of Residence; Cancellation or Transfer of Registration.
- 5.18b. Extension or Renewal of Registration by Voting or by Request for Renewal; Cancellation for Failure to Renew.
- 5.18c. Cancellation of Registration upon Death or Judicial Determination of Disqualification.
- 5.18d. Change of Name.

### Article

- 5.19. Repealed.
- 5.19a. List of Registered Voters.
- 5.19b. Reimbursement of County by State.
- 5.20. Repealed.
- 5.20a. Deputy Registrars.
- 5.21. Repealed.
- 5.21a. Statement of Registrations.
- 5.22. Repealed.
- 5.22a. Penalty for False Registration.
- 5.22b. Penalty for Forged or Fictitious Application.
- 5.22c. Penalty for Misdemeanor Offenses.
- 5.23. Repealed.
- 5.23a. Construction of Other Laws.
- 5.24. Repealed.

### Art. 5.01. Classes of Persons Not Qualified to Vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 33; Acts 1963, 58th Leg., p. 1017, ch. 424, § 12.]

Acts 1973, 63rd Leg., p. 1722, ch. 626 [Article 5923b of the Civil Statutes] provided that a person who is at least 18 years of age has all the rights, privileges and obligations of a person who is 21 years of age.

### Art. 5.02. Qualification and Requirements for Voting

Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this state one year next preceding an election and the last six months within the district or county in which such person offers to vote, and who shall have registered as a voter, shall be deemed a qualified elector. No person shall be permitted to vote unless he has registered in accordance with the provisions of this code. The provisions of this section, as modified by Sections 35 and 39 of this code,<sup>1</sup> shall apply to all elections, including general, special, and primary elections, whether held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 34; Acts 1963, 58th Leg., p. 1017, ch. 424, § 13; Acts 1965, 59th Leg., p. 760, ch. 354, § 1; Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 1; Acts 1967, 60th Leg., p. 936, ch. 414, § 1, eff. Feb. 1, 1968.]

<sup>1</sup> Articles 5.03 and 5.07.

### Art. 5.02a. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

### Art. 5.02b. Expired.

### Art. 5.03. Qualifications for Voting for Bond Issues, Lending Credit, Expending Money, or Assuming Debt

When an election is held by any county, or any number of counties, or any political subdivision of the state, or any political subdivision of a county or any defined district now or hereafter to be described

and defined within the state, and which may or may not include towns, villages, or municipal corporations, or any city, town, or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the state, county, political subdivision, district, city, town, or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. Property shall be deemed to have been duly rendered for taxation, for the purpose of determining eligibility to vote in an election as provided in this code and in Article VI, Section 3a, of the Texas Constitution, only if the property was rendered to the county, city, district, or other political subdivision holding the election within the period of time fixed by law for such rendition, or was placed on the tax rolls by the tax assessor prior to the date on which the election was ordered, if the regular rendition period expired before that date. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 35; Acts 1957, 55th Leg., p. 99, ch. 48, § 1; Acts 1969, 61st Leg., p. 2662, ch. 878, § 7, eff. Sept. 1, 1969.]

#### Art. 5.04. Affidavit of Voter in Bond Election, Etc.

(a) Before any person is allowed to vote in an election for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, he shall sign and swear to an affidavit to the effect that he owns property, giving a description of one item, which has been duly rendered for taxation to the political subdivision holding the election at a time and in a manner which entitles him to vote in the election, as provided in Section 35 (Article 5.03) of this code. The voter's registration certificate number shall be shown on the affidavit, and it shall contain a statement that the affiant understands that the giving of false information in the affidavit is a felony punishable by a fine not to exceed \$5,000 or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment.

(b) The secretary of state shall prescribe the form of the affidavit, and may prescribe instructions to accompany the affidavit. A form for multiple signatures of voters may be used for voting at regular polling places and for absentee voting by personal appearance where the absentee ballots are cast on a voting machine or are counted by a special canvassing board.

Each person voting an absentee ballot by mail or voting by personal appearance in elections where the ballots are to be sent to regular polling places for counting shall be furnished an individual affidavit form, which shall be signed and sworn to at the time the voter marks his ballot. After the voter seals the ballot envelope, he shall place the affidavit into the carrier envelope along with the ballot envelope and the ballot stub. The election officers shall ascertain that the affidavit is properly executed before open-

ing the ballot envelope, and if it is not properly executed, the ballot shall be rejected.

Voters voting at regular polling places or voting absentee by personal appearance shall swear to the affidavit before an officer of the election, and all clerks and deputy clerks for absentee voting and all election judges and clerks at regular polling places shall have authority to administer the oath required of the voter.

(c) The description of a specific item of property which is required on the affidavit shall be sufficient as to personal property if it identifies the property by a general statement of its nature, as, for example, household furniture, automobile, livestock, jewelry, stock of merchandise, corporate securities, etc. For real property, a description of the property by abstract, survey, patent, subdivision, block, lot, or other legal description shall not be necessary. If the real property is located in an incorporated city, town, or village, a statement of the location of the property by street and number shall be sufficient; and if it is located in an unincorporated town or village, it shall be sufficient to identify the property by general description as so located, as, for example, "house and lot in the town of \_\_\_\_\_." It shall be sufficient to describe a farm, ranch, or other rural property by a statement of its location with reference to a town, community, or other well-known landmark, as, for example, "farm near \_\_\_\_\_." Upon request of the voter, the election officer attending him shall inform him as to what will be a sufficient description on the affidavit for the specific item of property which he wishes to list.

(d) The ballot of a voter who has been accepted by the election officer as eligible to vote at the election shall never be declared void for any defect or insufficiency in the affidavit or for any misstatement as to property asserted to have been rendered, if the voter in fact is the owner of any property which has been duly rendered for taxation to the subdivision holding the election.

(e) After voting is concluded, an officer of the election shall place all the affidavits in an envelope or other container which shall be securely fastened and marked to identify its contents, and the presiding judge shall deliver the affidavits to the officer having custody of the ballots voted at the election at the same time that he delivers the returns, and the affidavits shall be preserved by such officer under the same regulations applicable to preservation of ballots. The affidavits shall be open to public inspection, but the inspection must be in the presence of the custodial officer or a duly authorized deputy.

(f) A person who knowingly gives false information or makes any false statement in the affidavit required by this section is guilty of a felony punishable by a fine not to exceed five thousand dollars or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 36; Acts 1967, 60th Leg., p. 1870, ch. 723, § 15, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 8, eff. Sept. 1, 1969.]

**Art. 5.05. Absentee Voting****Who May Vote Absentee**

Subd. 1. Any qualified voter of this state who expects to be absent from the county of his residence on the day of the election, or who because of sickness, physical disability, or religious belief cannot appear at the polling place in the election precinct of his residence on the day of the election, may nevertheless cause his vote to be cast at any election held in this state by compliance with the applicable method herein provided for absentee voting. If a voter's religious belief prohibits him from voting during any part of the time during which the polls are open on the day of the election, he shall nevertheless be entitled to vote absentee even though the prohibition does not operate throughout the entire time that the polls are open.

Absentee voting shall be conducted by two methods:

- (1) voting by personal appearance at the clerk's office, and
- (2) voting by mail.

All voters coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. The following persons, and no other, may vote by mail:

(i) Qualified voters who because of sickness or physical disability, or because of religious beliefs, cannot appear at the polling place on the day of the election. The application for an absentee ballot shall be made not more than sixty days before the day of the election. It must be mailed to the clerk, and the clerk shall preserve the envelope in which it is received. If the application is delivered to the clerk by any method other than by mailing it to him, the ballot shall be void and shall not be counted. The voter shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent residence address or the address at which he is temporarily living. If the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any address other than one of the foregoing, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(ii) Qualified voters who, before the beginning of the period for absentee voting, make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours for the entire period of absentee voting. The voter must state in his application that he expects to be absent from the county of his residence on election day and during the

clerk's regular office hours for the entire period for absentee voting. The application shall be made not more than sixty days before the day of the election, and may be mailed to the clerk or delivered to him by the voter in person, but the clerk shall not furnish a ballot to the voter by any method other than by mailing it to him. Applications made under this paragraph may be mailed either from within or without the county of the voter's residence, but in every case the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the carrier envelope in which the ballot is returned to the clerk is postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iii) Qualified voters who, after the beginning of the period for absentee voting, apply for an absentee ballot on the ground of expected absence from the county and who are absent from such county at the time of applying for an absentee ballot and expect to be absent from such county during the clerk's regular office hours for the remainder of the period for absentee voting. The voter must state in his application that he is absent from the county at the time of making the application and expects to be absent on election day and during the clerk's regular office hours for the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such voter unless the envelope in which the application received is postmarked from a point outside the county, and the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

An application for an absentee ballot to be voted by mail shall state the applicant's permanent address and the address to which the absentee ballot is to be mailed to the applicant, and shall also state the address to which his poll tax receipt or exemption certificate is to be mailed back to him.

**Elections to which Applicable; Officer to Conduct Absentee Voting**

Subd. 1a. (1) General provisions. Absentee voting shall be conducted in all elections, general, special, or primary, and in each election it shall be conducted by the officer designated or appointed in accordance with the applicable provision of this subdivision. In every election, the absentee voting shall be conducted under the same rules and in the same manner provided in this Section for absentee voting conducted by the County Clerk, and all references in other subdivisions of this Section to the County

Clerk shall be deemed to mean the appropriate officer for conducting the absentee voting in that election unless the context requires a different construction.

(2) County-wide elections held at the expense of the county. In general elections for State and County officers, in special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), in all other county-wide elections held at the expense of the county, and in any other elections held at the expense of the county where a specific statute expressly requires it, the absentee voting shall be conducted by the County Clerk.

(3) Elections less than county-wide which are ordered by county authority. In elections less than county-wide which are ordered by the county Commissioners Court, the County Judge, the county board of school trustees, or other county authority, the authority calling the election shall appoint a clerk for absentee voting and shall designate the place for conducting the absentee voting. If the election is held at the expense of the county, the absentee voting clerk may be either the County Clerk or any qualified voter of the county. If the county clerk is appointed, the place for conducting the absentee voting by mail shall be at the office of the clerk, but the place for absentee voting by personal appearance may be either at the office of the clerk, regardless of whether it is situated within the territory covered by the election, or may be at some other public place which shall be within the boundaries of the territory covered by the election. If the expenses of the election are not paid out of county funds, the person appointed to conduct the absentee voting shall be a qualified voter of the county, and the place designated for conducting the absentee voting, both by mail and by personal appearance, shall be within the boundaries of the territory covered by the election. The County Clerk may delegate to one or more of his deputies any duty devolving upon him under this subdivision. Where some person other than the County Clerk is appointed, the authority calling the election may also appoint such number of deputy clerks, who shall be qualified voters of the county, as it deems necessary to assist in the conduct of the absentee voting. In any election ordered by county authority, or by any other authority, which election involves the creation, organization, reorganization, functioning or existence of one or more municipalities or other political subdivisions, only one clerk for absentee voting shall be appointed if only one political subdivision is affected by the election; but where more than one political subdivision is affected, the authority calling the election may appoint more than one clerk for absentee voting, and if more than one is appointed, the authority shall designate the political subdivision or subdivisions to be served by each clerk and the location at which he is to serve. No territory shall be served by more than one clerk.

(4) Municipal elections. In all elections held by a city or town, the absentee voting shall be conducted by the city secretary or city clerk.

(5) Primary elections. In primary elections held by political parties for nominating candidates to be voted on at general and special elections held at the expense of the county, the absentee voting shall be conducted by the County Clerk. In primary elections for nominating candidates for city offices, the absentee voting shall be conducted by the city secretary or city clerk.

(6) Elections held by other political subdivisions. In elections held by any school district, conservation district, or other defined district or political subdivision authorized to hold elections in this State, the absentee voting shall be conducted by a clerk for absentee voting, to be appointed by the governing board or other authority of the political subdivision empowered to call the election, which may also appoint such number of deputy clerks as it deems necessary to assist in the conduct of the absentee voting. Each clerk or deputy clerk shall be a qualified voter in the subdivision; provided, however, that if the election affects more than one political subdivision, residence anywhere within the territory covered by the election shall be sufficient. Persons in the employment of the political subdivision shall be eligible for appointment if otherwise qualified.

(7) Places and hours for absentee voting. Where the absentee voting is conducted at the regular office of the County Clerk or city secretary or city clerk, the provisions of Subdivision 3 of this Section relating to the days and hours for voting, as modified by Subdivision 3d, shall apply. Where the voting is conducted at some other place, either by the County Clerk or by a clerk specially appointed for that purpose, the authority calling the election shall designate the hours during which the clerk for absentee voting shall keep his office open, which for the purposes of this Section shall constitute the clerk's regular working hours, and shall require that the office remain open for at least eight hours on each day for absentee voting which is not a Saturday, a Sunday, or an official State holiday. Except in elections for which absentee voting is required by law to be conducted by the County Clerk or city secretary or city clerk, the place or places and hours for absentee voting shall be stated in the order calling the election and in the election notice, which shall also state the clerk's mailing address to which ballot applications and ballots voted by mail may be sent.

(8) Compensation of clerk for absentee voting. Neither the County Clerk nor the city secretary or city clerk shall receive any additional compensation for performing the duties devolving upon him under this Section, but additional deputies necessitated thereby may be appointed and compensated under the General Law pertaining to appointment of deputies. Except as herein required or expressly authorized, the County Clerk shall not conduct absentee voting in any election. In all elections where some

person other than the County Clerk or city secretary or city clerk conducts the absentee voting; the authority calling the election shall fix the compensation of such person and his deputies, if any, which shall be paid out of the same fund as other expenses of the election are paid. Employees of the authority calling the election or employees of any political subdivision of the State which is affected by the election, with the permission of its governing board, may be appointed to serve as clerk or deputy clerk for absentee voting without additional compensation.

Application for Ballot

Subd. 2. A voter desiring to vote absentee shall make written application for an official ballot to the county clerk of the county of his residence, which application shall be signed by the voter, or by a witness at the direction of the voter in the case of the latter's inability to make such application because of physical disability. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application by mail, it shall also state the additional information required by Subdivision 1 of this section. In case of an application to vote absentee by personal appearance, except where the voted ballot is to be placed in a carrier envelope, the application shall contain or have attached thereto an affidavit signed by the applicant, in substantially the following form:

I, \_\_\_\_\_, do solemnly swear that I am a resident of Precinct No. \_\_\_\_\_, in \_\_\_\_\_ County, and am lawfully entitled to vote at the \_\_\_\_\_ election to be held in said precinct on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that I am prevented from appearing at the polling place in said precinct on the date of the election because of \_\_\_\_\_ (voter to signify sickness, physical disability, expected absence from county, or religious belief).

\_\_\_\_\_  
(Signature of Voter)

By: \_\_\_\_\_  
(Signature of witness who assisted voter in event of physical disability)

The application shall be accompanied by the poll tax receipt or exemption certificate of the voter, or in lieu thereof, his affidavit in writing that same has been lost or mislaid or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. If the ground of application is sickness or physical disability by reason of which the voter cannot appear at the polling place on election day, a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner certifying to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that I have personal knowledge of the physical condition of \_\_\_\_\_, and that

because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Witness my hand at \_\_\_\_\_, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Signature of Practitioner)

Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability, and a physician executing a certificate for a pregnant woman may state in the certificate that because of pregnancy and possible delivery she will be or may be unable to appear at the polling place on election day.

Any person who requests a physician, chiropractor, or Christian Science practitioner to execute a certificate for another person without having been directed by such other person to do so, and any physician, chiropractor, or Christian Science practitioner who knowingly executes a certificate except upon the request of the voter named therein or upon request of someone at the voter's direction, or who knowingly delivers a certificate except by delivering it to the voter in person or by mailing it to the voter at his permanent residence address or the address at which he is temporarily living, or who knowingly falsifies a certificate, shall be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars or imprisoned in the county jail for not more than thirty days, or both so fined and imprisoned.

Absentee Voting by Members of the Armed Forces, Etc.

Subd. 2a. (a) Notwithstanding any provision of Subdivision 1 or Subdivision 2 of this section, any qualified voter within any of the following categories shall be entitled to vote absentee by mail upon making a sworn application by mail for an absentee ballot on an official federal post card application for absentee ballot, and no further statement of his eligibility to vote absentee by mail shall be required of him, provided the application is mailed from outside the county and the ballot is to be mailed to an official address outside the county:

(1) a member of the armed forces of the United States while in the active service, his spouse and dependents;

(2) a member of the merchant marine of the United States, his spouse and dependents; and

(3) a citizen of the United States domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

(b) Application for an absentee ballot made on a federal post card application form by a voter coming within either of the categories listed in Paragraph (a) of this subdivision shall not be subject to the provisions of Paragraph (ii) of Subdivision 1 of this section which requires that the application be made

not more than 60 days before the day of the election; and an application received at any time within either the calendar year or the voting year during which the election is held shall be accepted. The voter may apply on one application form for a ballot for more than one election. Every application for a primary election ballot shall be treated as an application for both the first primary election and the second primary election of the political party indicated on the application. If the application does not indicate the election or elections for which application is made, the clerk shall treat it as an application for each general election for which he will conduct the absentee voting during that calendar year, and in the case of an application made to a county clerk, he shall also treat it as an application for both the first and the second primary election of the political party indicated if a party preference is indicated on the application.

(c) The applicant need not be registered as a voter, and, if registered, he need not accompany his application with his voter registration certificate or an affidavit of its loss. Before mailing a ballot in response to an application, the clerk shall ascertain whether the applicant's name is listed on the current list of registered voters for the precinct of his residence, and if it is not so listed, the application shall also be treated as an application for registration for all elections for which the applicant is applying for an absentee ballot.

(d) If the applicant is not currently registered through the registrar of voters, the clerk shall examine the information on the federal post card application, and if it shows that the applicant possesses the qualifications for voting at that election in the precinct of his residence, the clerk shall enter his name on a list headed "Absentee voters registering by FPCA for the \_\_\_\_\_ election held on \_\_\_\_\_" and shall also enter thereon the voter's local permanent address and election precinct number, the address to which the ballot is mailed, and the date on which it is mailed. The list shall be made up in duplicate and shall be kept up from day to day. One copy shall be posted in the clerk's office, which shall serve to fulfill the requirement of Subdivision 11 of this section. After the election is held, this copy shall be filed as a record of the clerk's office if the clerk conducting the absentee voting is a county clerk or a city secretary or city clerk, and as a record of the authority which appointed the clerk for absentee voting in other instances, to be preserved for a period of two years, after which it may be destroyed. The other copy shall be placed with the records of the election which are delivered into the custody of the officer designated in Paragraph (a)(2) of Section 111b of this code,<sup>1</sup> to be subject to the same regulations as those records.

(e) The clerk shall mail a ballot and the other balloting supplies to each voter in an envelope endorsed "Official Election Balloting Material—via Air Mail" or similar language, with the words "Free of U. S. Postage, Including Air Mail" printed in a box

in the upper right corner of the envelope, in conformity with the specifications contained in the Federal Voting Assistance Act of 1955, as amended.<sup>2</sup> The carrier envelope included in the balloting supplies mailed to the voter shall be similarly endorsed. The secretary of state shall prescribe forms and furnish instructions for the preparation of envelopes to comply with these provisions.

(f) The names of regularly registered voters who apply for absentee ballots on federal post card application forms shall be included on the lists of absentee voters which the clerk sends to the presiding judges of the election, but the names of absentee voters who register under this subdivision shall not be sent to the presiding judges.

(g) Oaths and affirmations required for application for and the voting and returning of absentee ballots by voters using the federal post card application forms may be administered and attested by any commissioned officer in the active service of the armed forces or by any civilian official empowered by state or federal law to administer oaths.

(h) Words and phrases used in this subdivision shall be construed to have meanings in harmony with the Federal Voting Assistance Act of 1955, as amended.

<sup>1</sup> Article 8.29b, (a)(2).

<sup>2</sup> 50 U.S.C.A. § 1451 et seq.

#### Ballots for Absentee Voting

Subd. 2b. Before the beginning of the period for absentee voting, the authority charged with the duty of furnishing the supplies for the election shall furnish to the clerk a supply of official ballots for use in absentee voting. Before mailing or delivering a ballot to a voter, the clerk shall cause his signature to be placed on the back of the ballot. The absentee ballots may be signed by the clerk in his own handwriting, or they may be stamped with a facsimile of his signature by the clerk or by a deputy under his direction. Where a stamp is used, the clerk shall take the necessary precaution to see that the stamp is properly safeguarded at all times so that no unauthorized use may be made of it.

#### Comparison of Signatures

Subd. 2c. Before furnishing a ballot to an absentee voter who presents his registration certificate with his application, the clerk shall compare the signature on the application with the signature on the certificate. If he finds that the signatures do not correspond, he shall not furnish a ballot to the voter unless the voter complies with the procedure prescribed in Section 91 of this code<sup>1</sup> for acceptance of a challenged voter. In each instance, both on applications made by mail as well as those made by personal appearance, the clerk shall inform the voter of the ground of the challenge and the procedure necessary to enable the voter to obtain a ballot. Where application is by mail, the clerk shall mail a notice to the voter on the same day that the comparison is made.

<sup>1</sup> Article 8.09.

## Certificate of Permanent Disability

Subd. 2d. (a) A voter having an ailment or physical disability which renders him permanently unable to appear at the polling place is not required to accompany his application for an absentee ballot with the certificate of sickness or physical disability referred to in Subdivision 2 of this section if he files a certificate of permanent disability with the registrar of voters as provided in this subdivision. A certificate of permanent disability must be signed by a duly licensed physician or chiropractor or accredited Christian Science practitioner and must certify that the person signing it has personal knowledge of the voter's physical condition; that the voter has an ailment or physical disability of a continuing nature which renders him unable to appear at the polling place for voting; or that the voter is in continuous residence at a duly licensed nursing or custodial home because of sickness or physical disability; and that it is the signer's opinion that the voter will be permanently unable to appear at the polling place for any election held in the future. The criminal penalties stated in Subdivision 2 of this section in regard to certificates of sickness or physical disability executed under that subdivision also apply to certificates of permanent disability executed under this subdivision.

(b) A certificate of permanent disability which complies with the requirements of this subdivision becomes effective for absentee voting in all elections held on or after the 31st day after the date on which the registrar receives it.

(c) When the registrar receives a certificate of permanent disability which complies with the requirements of this subdivision, he shall take the necessary steps to have the notation of permanent disability added on the list of registered voters, as provided in Paragraph (e) of this subdivision, and shall then attach the certificate to the voter's application for registration.

(d) If, after filing a certificate of permanent disability, a voter later becomes able to appear at the polling place, it is his duty to notify the registrar to that effect, whereupon the registrar shall cancel the certificate. The registrar shall investigate any report or any information furnished to him which indicates that a voter who has filed a certificate of permanent disability is presently able to appear at the polling place, and if he has reason to believe that this is true, he shall notify the voter by registered or certified mail, return receipt requested, that the voter's status as a permanently disabled absentee voter will be cancelled unless he furnishes the registrar with a new certificate of permanent disability within 60 days after the date of the notice. The registrar shall cancel the certificate if the voter does not comply.

(e) Whenever the registrar makes up a list of registered voters under the provisions of Section 51a of this code,<sup>1</sup> he shall mark the name of each voter who has on file a currently active certificate of permanent disability in a manner to indicate that

status. This may be done by placing a symbol by the voter's name with an appropriate explanatory footnote in the words "certificate of permanent disability for absentee voting is on file" or words of similar import, or in any other manner which is approved by the Secretary of State. Also, at the time the registrar prepares any supplemental list of registered voters which will be used in the conduct of absentee voting for an election, he shall make up and furnish to the absentee voting clerk a list of voters, arranged alphabetically by election precinct, who have filed certificates of permanent disability since preparation of the original lists of registered voters for the current voting year and who are not shown to be in that status on the original or supplemental list on which the voter's name appears. The registrar shall also prepare for the absentee voting clerk lists of voters whose certificates of permanent disability have been cancelled since preparations of the list of registered voters on which the voter's name appears.

(f) The Secretary of State shall prescribe a form for the certificate of permanent disability, and each registrar of voters shall keep a supply of the forms on hand. However, a certificate in any other form is also acceptable if it satisfies the requirements of Paragraph (a) of this subdivision.

(g) The instructions on the blank application form which the absentee voting clerk furnishes to voters who wish to apply for an absentee mail ballot shall carry the information that a certificate of sickness or disability need not accompany the application of a permanently disabled voter who has filed a certificate of permanent disability with the registrar of voters more than 30 days before the election for which he is applying for a ballot. The form shall contain a space for the voter to so indicate if he is applying as a permanently disabled voter who has filed the certificate.

<sup>1</sup> Article 5.19a.

## Period for Voting by Personal Appearance

Subd. 3. (a) The period for absentee voting by personal appearance shall begin on the twentieth day and shall continue through the fourth day preceding the date of the election; provided, however, that when the twentieth day falls on a day which is not a regular working day for the clerk's office, the absentee voting by personal appearance shall begin on the next succeeding regular working day. Except as authorized in Subdivision 3d of this section, the clerk shall not permit anyone to vote absentee by personal appearance on any day which is not a regular working day for the clerk's office, and under no circumstances shall he permit anyone to vote absentee by personal appearance at any time when his office is not open to the public.

(b) At any time within the period for absentee voting, a voter who is eligible to vote absentee may do so by making his personal appearance before the county clerk of the county of his residence at the office of the clerk and delivering to such clerk his application aforesaid.

(c) Watchers, as provided for in Sections 19, 20, and 21 of this Code,<sup>1</sup> may be appointed to observe the conduct of absentee voting in the clerk's office. An appointing authority may appoint different watchers to serve on different days of the absentee voting period. The certificate of appointment need not designate the specific dates on which each watcher will serve, and all of them may be appointed for the entire period, but the total number of watchers appointed by the same authority under Section 19, or appointed upon the same petition under Section 20, shall not exceed seven, of which number not more than two shall be on duty at the same time.

<sup>1</sup> Articles 3.05, 3.06 and 3.07.

Voting by Personal Appearance in County-wide Elections

Subd. 3a. In a county-wide election, or in an election less than county-wide where the authority holding the election has provided that absentee voting by personal appearance shall be conducted on a voting machine or that absentee paper ballots shall be counted by a special canvassing board, upon receipt of an application for an absentee ballot to be voted by personal appearance, if the clerk is satisfied as to the right of the applicant to vote, the clerk shall place a notation on the list of qualified voters showing that the particular person has voted absentee and shall enter the voter's name on a poll list of absentee voters. He shall make a notation on the voter's poll tax receipt or exemption certificate that the voter has voted absentee in the election, shall note the number of the receipt or certificate on the application, and shall return the receipt or certificate to the voter. The application shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots.

In the conduct of absentee voting under this subdivision, the clerk shall possess the same power as a presiding judge with respect to examination and acceptance of a voter. If the right of an applicant to vote is challenged, the procedure prescribed in Section 91 of this Code<sup>1</sup> shall be followed.

Where paper ballots are used for absentee voting, after a voter has been accepted, the clerk shall furnish the voter with an official ballot which has been prepared in accordance with law for use in such election. The voter shall then and there, in the office of the clerk, mark his ballot and detach and sign the ballot stub, and shall deposit the ballot in a ballot box and the stub in a stub box in the manner provided in Section 97 of this Code.<sup>2</sup> The ballots shall be deposited in a ballot box locked with two locks, the keys of one of which shall be kept during the period for absentee voting by the sheriff and the keys of the other by the county clerk. The stubs shall be deposited in a stub box prepared in accordance with Section 97 of this Code.

Where a voting machine is used for absentee voting by personal appearance, after a voter has been accepted, he shall then be permitted to cast his ballot on the voting machine. Returns of absentee

votes cast on a voting machine shall be made under the appropriate provision of Section 79 of this Code.<sup>3</sup>

<sup>1</sup> Article 8.09.

<sup>2</sup> Article 8.15.

<sup>3</sup> Article 7.14.

Voting by Personal Appearance in Election less than County-wide

Subd. 3b. In an election less than county-wide in which absentee paper ballots are to be sent to the regular polling places for counting, upon receipt of an application of an absentee ballot to be voted by personal appearance, the clerk shall thereupon furnish to the voter the following absentee voting supplies:

(1) One official ballot which has been prepared in accordance with law for use in such election.

(2) One ballot envelope, which shall be a plain envelope, without any markings except the words "Ballot Envelope" printed on the face thereof, followed by the instructions contained in this subdivision and Subdivision 4 for marking the ballot, for placing it in the carrier envelope, and for returning a ballot to be voted by mail, together with a statement of the deadline for placing the ballot in the mail and for delivery to the clerk's office in that election.

(3) One carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post-office address of the county clerk, and upon the other side a printed affidavit in substantially the following form:

I, \_\_\_\_\_, do solemnly swear that I am a resident of Precinct No. \_\_\_\_\_, in \_\_\_\_\_ County, and am lawfully entitled to vote at the \_\_\_\_\_ election to be held in said precinct on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; that I am prevented from appearing at the polling place in said precinct on the date of such election because of \_\_\_\_\_ (voter to signify sickness, physical disability, expected absence from county, or religious belief); that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person; and that I did not use any memorandum or device to aid me in the marking of said ballot.

\_\_\_\_\_  
(Signature of voter)

By: \_\_\_\_\_  
(Signature of witness who assisted voter in event of physical disability)

The voter shall then and there, in the office of the clerk, mark the ballot in the presence of the clerk, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign and swear to the affidavit on the carrier envelope, and deliver the carrier envelope to

the clerk, who shall certify to the affidavit. The clerk shall, when requested, also take any other affidavits for a voter which are required by this Code, for which service no fee shall be charged. The clerk shall make a notation on the voter's poll tax receipt or exemption certificate that he has voted absentee in the election, shall note the number of the receipt or certificate on the application, and shall return the receipt or certificate to the voter.

Voting on Election Day by Disabled Voter in Voting Machine Counties

Subd. 3c. The provisions of this subdivision shall apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, and shall apply only to voters residing in election precincts in which voting at the regular polling place on election day is being conducted by use of a voting machine or machines. Under these stated conditions, a voter may vote as herein provided if he is ill or disabled and thus cannot, without injury to his health or without personal assistance, cast his vote in the regular manner. A voter complying with these requirements may be voted in an ambulance or other conveyance at the entrance to the place in which absentee voting by mail was conducted for the election, between the hours of 8:00 a. m. and 2:00 p. m. on the day of the election, by the clerk who conducted the absentee voting for the election, using an absentee-by-mail ballot. Poll watchers appointed to observe absentee voting for the election shall be entitled to be present at the voting. Except as otherwise provided in this subdivision, the voting procedure shall be the same as for absentee voting by personal appearance in the clerk's office under the provisions of Subdivision 3b of this Section.

The application to vote under the provisions of this subdivision shall be in the form of an affidavit substantially as follows:

**"AFFIDAVIT FOR VOTING AT ABSENTEE VOTING PLACE ON ELECTION DAY**

"I, the undersigned, do solemnly swear that:

- (a) My name is \_\_\_\_\_.
- (b) My home address is \_\_\_\_\_.
- (c) I am a voter in Precinct \_\_\_\_\_.
- (d) My current poll tax receipt or exemption certificate number is \_\_\_\_\_.
- (e) I am ill or disabled and thus cannot, without injury to my health or without personal assistance, cast my vote in the regular manner, and I have not previously voted in the election being held today.

Date \_\_\_\_\_ (Signature of voter)

(Jurat of officer administering the oath.)"

The voter shall not be required to fill out the affidavit on the carrier envelope. The clerk shall place the application and the carrier envelope containing the voted ballot into a jacket envelope and

shall deliver the jacket envelope to the special canvassing board for counting absentee ballots. Thereafter, the ballot shall be handled in the same manner as an absentee ballot voted by mail, with such modifications as are necessary to fit the circumstances.

Voting Absentee in Person on Last Saturday and Sunday of the Absentee Voting Period before an Election

Subd. 3d. Notwithstanding anything to the contrary written elsewhere in this Code, absentee voting in person may be conducted in the office of the County Clerk or city secretary or clerk between 2:00 p. m. and 8:00 p. m. on the last Saturday, Sunday, or Saturday and Sunday of the absentee voting period before any general, special, or primary election for which such officer is required to conduct the absentee voting under the provisions of Paragraph (2), (4), or (5) of Subdivision 1a of this Section. The officer conducting the absentee voting shall have the authority to decide whether to keep his office open during any or all of the hours herein permitted; provided, however, that if he keeps his office open during any of these hours, he shall give notice of such hours during which voting will be conducted by posting a notice at each entrance to his office at least ten days before said Saturday or Sunday.

The foregoing provisions of this subdivision shall not apply to any elections other than those stated in the first paragraph. However, nothing in this subdivision or in Subdivision 1a or Subdivision 3 of this Code shall prevent the authority calling any other type of election from requiring the clerk appointed to conduct the absentee voting to keep his office open during the hours stated in the first paragraph of this subdivision.

Voting by Mail

Subd. 4. The period for absentee voting by mail shall begin on the twentieth day preceding the date of the election. An application for an absentee ballot to be voted by mail must be received in the clerk's office not later than the close of business on the fourth day preceding election day. In county-wide elections and in elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, the marked ballot must be mailed back to the clerk in an envelope postmarked not later than midnight of the day preceding election day, and must be received in the clerk's office before one o'clock p. m. on election day. In all other elections which are less than county-wide, the marked ballot must be mailed back to the clerk in an envelope postmarked not later than midnight of the third day preceding election day and must be received in the clerk's office before ten o'clock a. m. on the second day preceding election day. The ballot may be marked by the voter at any time after he receives it and prior to the deadline for placing the marked ballot in the mail.

On the twentieth day preceding election day, or as soon thereafter as possible, the clerk shall mail an official ballot, ballot envelope, and carrier envelope, as described in Subdivision 3b of this section, to each voter who has theretofore made application for a ballot in compliance with this section. On applications which are received between the twentieth day and the fourth day preceding election day, the clerk shall forthwith mail the absentee voting supplies to the voter.

The voter shall mark the ballot before a notary public or other person authorized to administer oaths, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot, and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign and swear to the affidavit on the carrier envelope, which shall be certified by the notary public or other officer before whom the ballot is marked. The carrier envelope shall then be mailed, postage prepaid, to the county clerk.

As soon as practicable after receipt of the carrier envelope containing the marked ballot, the clerk shall make a notation on the voter's poll tax receipt or exemption certificate that he has voted absentee in the election (or that the ballot was received after the deadline for returning ballots, in the case of late ballots), shall note the number of the receipt or certificate on the application, and shall mail the receipt or certificate to the voter at the address given in the application for returning the receipt or certificate to the voter, or if no such address is given, to the voter's permanent address.

Period for Absentee Voting in Special Run-off Elections Held for Members of the Legislature

Subd. 4a. Notwithstanding the provisions of Subdivisions 3 and 4 of this Article, absentee voting in special run-off election held for the election of Members of the Legislature begins on the 10th day preceding the date of the election, and the period for absentee voting by mail in such election begins not later than the 10th day preceding the date of the election. Ballots to be voted by mail may be mailed to voters and may be marked and mailed back to the clerk before the 10th day, if the ballots are available before that date. In all other respects the procedure for absentee voting in the special run-off election is the same as in other elections.

Period for Absentee Voting in Second Primary

Subd. 4b. Notwithstanding the provisions of Subdivisions 3 and 4 of this Section, the period for absentee voting by personal appearance in each second (runoff) primary election held under the provisions of Section 181 of this Code<sup>1</sup> shall begin on the tenth day preceding the date of the election, and the period for absentee voting by mail in such election shall begin not later than the tenth day preceding the date of the election. Ballots to be

voted by mail may be mailed to voters and may be marked and mailed back to the clerk before the tenth day, if the ballots are available before that date. In all other respects the procedure for absentee voting in the second primary shall be the same as in other elections.

<sup>1</sup> Article 13.03.

Period for Absentee Voting in Certain other Elections

Subd. 4c. Whenever any election is lawfully called for a date which does not permit the full period for absentee voting, the voting shall begin as soon as possible after the ballots become available, provided, however, that the voting shall begin not later than the tenth day before the election.

Voting Upon Return to County after Applying for Absentee Ballot by Mail

Subd. 4d. If a voter to whom an absentee ballot has been mailed returns to the county of his residence before receiving or returning the ballot and will be present in the county on the day of the election, he may vote on election day at the regular polling place in the precinct of his residence after notifying the clerk in writing to void his application for an absentee ballot. Upon receiving the notification, the clerk shall remove his name from the list of absentee voters. If the voter will not be present in the county on the day of the election, he may vote an absentee ballot by personal appearance in the clerk's office at any time during the period for absentee voting by personal appearance after notifying the clerk to void his application for an absentee ballot by mail. The clerk shall make the necessary notations on his records to insure that the absentee ballot mailed to the voter will not be counted if it is returned to his office.

Period for Mailing Ballot to Voter Outside the United States, Etc.

Subd. 4e. Notwithstanding the provisions of Subdivision 4 of this section, the clerk shall mail a ballot to an absentee voter as soon as possible after the ballots become available, but not earlier than 30 days before the election, if the ballot is to be mailed to one of the following: (1) an address outside the United States; (2) an address in the United States for forwarding to the voter at a location outside the United States; (3) an Army Post Office (APO) or a Fleet Post Office (FPO) address; or (4) an address in the United States for delivery or forwarding to a member of the merchant marine. If, after an absentee ballot is mailed to a voter, any change is made in the official ballot due to the death of a candidate or for any other reason except to correct an error, the clerk shall not mail another ballot to the voter, and the votes cast for that office on ballots mailed before the change is made shall not be counted.

Delivery of Ballots to Election Judges; Late Ballots

Subd. 5. Upon receipt of a ballot sealed in a carrier envelope, including those ballots which have been marked in the clerk's office and those which have been returned by mail, the clerk shall keep the

same unopened and shall deliver it to the proper canvassing board or election judge as hereinafter provided. Prior to delivering the carrier envelope the clerk shall enclose the same together with the voter's application and accompanying papers, including the envelope in which any application by mail was received, in a larger jacket envelope.

Ballots not received back by the clerk before the deadline for returning ballots as stated in Subdivision 4 shall not be delivered to the judges and shall not be voted. The unopened carrier envelopes containing late ballots and the corresponding applications shall remain in the custody of the clerk for the period during which a contest of the election may be filed, and shall then be destroyed if no contest arose.

#### Counting of Ballots in County-wide Elections

Subd. 6. (a) In all county-wide elections, and in elections less than county-wide where the authority holding the election has provided that absentee paper ballots shall be counted by a special canvassing board, on the day of the election the ballot box and stub box used for absentee voting by personal appearance, the keys to the ballot box, the jacket envelopes containing the ballots voted by mail and accompanying papers, the poll list for absentee voting on which the clerk has entered the names of persons voting by personal appearance, and the list of registered voters used by the county clerk, shall be delivered to a special canvassing board consisting of a presiding judge and two or more election clerks appointed in the same manner as provided for appointment of the election officers for regular polling places at that election. The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened and not later than one o'clock p. m. If delivered before one o'clock p. m., the clerk shall deliver in like manner to the board, at one o'clock p. m., all ballots received by mail before one o'clock p. m. of the day of the election which have not previously been delivered to the board.

(b) This special canvassing board shall open the jacket envelopes, announce the voter's name and ascertain in each case if he is qualified to vote at that election and if he has complied with all applicable provisions of this section to entitle his ballot to be cast. The board shall compare the signatures on the application and upon the affidavit on the carrier envelope, and in case the board finds that the signatures correspond, that the application and the affidavit are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list (on which voters voting by mail shall be listed separately from those who have voted by personal appearance) and shall open the carrier envelope so as not to deface the affidavit thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application and accompanying papers shall

be replaced in the jacket envelope and returned to the county clerk at the same time the voted ballots are returned, and shall be preserved for the length of time provided by law for the preservation of the voted ballots.

(c) If the ballot be challenged by an election officer, watcher, or other person, the grounds of challenge shall be heard and decided according to law, including the consideration of any affidavits submitted in support of or against such challenge. If the ballot be not admitted, there shall be endorsed on the face of the carrier envelope and the jacket envelope the word "rejected." The carrier envelopes containing rejected ballots shall be enclosed, securely sealed, in an envelope on which the words "rejected absentee ballots" have been written, together with a statement of the nature and date of the election, signed by the presiding judge, and shall be returned and preserved in the same manner as provided for return and preservation of official ballots voted at the election. The corresponding jacket envelopes containing the applications and accompanying papers shall also be returned to the clerk, and preserved for the length of time provided by law for preservation of the voted ballots.

(d) At such time as the presiding judge shall direct, the election officers whose duty it is to count the ballots shall open the absentee ballot box, remove the ballots from the sealed ballot envelopes, and proceed to count and make out returns of all ballots cast absentee, including the ballots voted by personal appearance, in the same way as is done at a regular polling place. The ballot envelopes for the ballots voted by mail may be discarded or destroyed.

(e) The special canvassing board, watchers, and all others connected with the conduct of absentee voting shall be subject to the provisions of Section 105 of this code<sup>1</sup> with respect to revealing information as to the results of the election.

(f) The special canvassing board shall possess the same qualifications, be subject to the same laws and penalties, and be paid the same wage as regular election judges; provided, however, that each member may be paid an amount not to exceed the compensation payable for ten hours of work if the time spent by the board in performing its duties is less than ten hours. Watchers may be appointed as for regular polling places.

<sup>1</sup> Article 8.23.

#### Counting of Ballots in Elections less than County-wide

Subd. 7. In all elections which are less than county-wide, the authority holding the election may provide, by proper resolution, that the absentee ballots shall be counted by a special canvassing board, in which event the procedure set out in Subdivision 6 of this section shall be followed. If the authority holding the election does not so provide, the clerk shall keep the carrier envelopes received by him until the second day prior to the election and shall then mail or deliver them as provided in Subdivision 8 of this section, and the ballots shall be counted as provided in Subdivision 9.

## Delivery of Ballots in Elections less than County-wide

Subd. 8. Upon the second day prior to the election, the clerk shall enclose each carrier envelope received by him before ten o'clock a. m. of that day, together with the voter's application and accompanying papers, in a larger jacket envelope, which shall be securely sealed and endorsed with the name and official title of such clerk, and the words "This envelope contains an absentee ballot and must be opened only at the polls on election day," and the clerk shall forthwith mail same, or deliver it in person, to the presiding judge of the election in the precinct of the voter's residence.

## Opening of Ballots in Elections less than County-wide

Subd. 9. On the day of such election the absentee votes cast in elections less than county-wide shall be opened by the election judges of the precinct holding said election in accordance with the provisions set out in Subdivision 6 above. Except as herein provided wherever applicable the provision set out in this Code for the regulation and carrying on of State-wide elections shall apply to elections less than county-wide.

## Deceased Voter

Subd. 10. Whenever it shall be made to appear to the canvassing board that any elector whose ballot has been marked and forwarded as hereinbefore provided, has since died, then the ballot of such deceased voter shall not be counted; provided however, the casting of the ballot of a deceased voter shall not invalidate the election.

## Posting List of Absentee Voters; Inspection of Applications, Etc.

Subd. 11. The county clerk shall post at a conspicuous place in his main office, and each other clerk for absentee voting designated in accordance with Subdivision 1a of this Section shall post at a conspicuous place in his office, for public inspection, a complete list of those to whom ballots have been delivered or sent out under this section, stating thereon the elector's name, address, precinct of residence and voter registration certificate number, and the date on which the ballot was delivered or mailed, which list shall be kept up from day to day. The applications and accompanying papers shall also be open to public inspection at regular office hours, but under such reasonable rules and regulations as the county clerk may adopt to safeguard the same and to reasonably economize his own time while they are in his keeping. It shall be the duty of the county clerk to deliver before the opening of the polls to each presiding judge, in person or by mail, the names of those who have voted absentee or made application to vote absentee for that election for that precinct.

## Deputies Acting for County Clerk

Subd. 12. Any of the duties by this Section [this article] committed to the county clerk may be per-

formed at the county clerk's office by one (1) or more deputies specially designated in writing by the county clerk to act in connection with the election stated in the appointment.

## Applicability of Penal Code to County Clerks, Etc.

Subd. 13. The county clerks, their deputies and officers acting under this Section shall be considered as judges or officers of election within the scope of Articles 215 to 231, inclusive, of the Penal Code of Texas, and all amendments hereto,<sup>1</sup> and be punishable as in said Articles respectively, provided in the case of judges or officers of election.

<sup>1</sup> Transferred; see, now, art. 15.21 et seq. of this Code.

## Branch Offices for Absentee Voting by Personal Appearance

Subd. 14. (a) Absentee voting by personal appearance shall be conducted at each branch office of the county clerk which is regularly maintained for the performance of general clerical duties, during the full period of time for which absentee voting by personal appearance is conducted at the main office.

(b) Upon authorization of the commissioners court in elections in which the county clerk conducts the absentee voting, and upon authorization of the governing body of the political subdivision holding the election in all other elections, the clerk for absentee voting shall maintain such temporary branch offices for conducting absentee voting by personal appearance as the governing body authorizes, and shall station one or more deputies at each branch office to conduct the voting. A branch office which is established in a city having more than 4,000 inhabitants who reside within the county or other political subdivision for which the absentee voting is conducted shall be kept open during the full period for absentee voting by personal appearance and during the regular working hours for the clerk at his main office. A schedule of the days and hours during which any branch office outside a city of more than 4,000 inhabitants will be open shall be prepared by the clerk and approved by the governing body. Not later than the 10th day before the beginning of the absentee voting period, the clerk shall make up and post in his main office a full schedule of the approved locations of all branch offices and the days and hours on which each office will be open, and shall make copies of the schedule available to all interested persons from that date forward until the close of the absentee voting period. Vehicles such as trucks, house trailers, campers, and other suitable movable structures may be used as temporary branch offices.

(c) Any voter eligible to vote absentee by personal appearance in the main office of the clerk may vote in any branch office. The deputy clerk in charge of absentee voting at each branch office shall transmit to the clerk at the close of each day of absentee voting the names of all persons who have voted absentee in the branch office on that day, together with other necessary information as provided in

Subdivision 11, for inclusion on the list of absentee voters posted in the main office. During the period for absentee voting by personal appearance, the applications and ballots of persons who have voted absentee may be retained in the branch office or may be delivered to the main office from time to time, but all applications and ballots shall be delivered to the main office not later than one o'clock p. m. on the third day prior to election day. Except as otherwise provided in this subdivision, the voting in a branch office shall be subject to the same regulations as the voting in the main office.

**Branch Offices for Absentee Voting by Personal Appearance in Counties having a Population of more than 1,500,000**

Subd. 14a. (a) Upon authorization of the Commissioners Court of a county having a population of more than 1,500,000, the county clerk of such county shall conduct absentee voting by personal appearance at a suitable location in each justice precinct in the county in elections in which the county clerk is the officer for conducting the absentee voting. This subdivision does not apply to elections in which the absentee voting is conducted by any officer other than the county clerk. Notwithstanding the provisions of Subdivision 14 of this section, if suboffices are established under this Subdivision 14-a, the county clerk shall not conduct absentee voting at any location other than his main office and the suboffices authorized by this subdivision. Such voting in each election suboffice shall be for the full period of time, and for the same hours, for which absentee voting is conducted at the main office.

(b) Any voter who is eligible to vote absentee by personal appearance in the main office of the county clerk shall be eligible to vote absentee by personal appearance either in the main office of the county clerk or in the election suboffice of the county clerk in the justice precinct in which is located the election precinct of the voter's residence.

(c) The list of voters who vote absentee in each election suboffice each day shall be posted the next day both in the election suboffice in which the voter voted and in the main office, with the list of each election suboffice being posted in the main office separate and apart from the lists of the other election suboffices. Each such list of voters shall be compiled in accordance with statutory requirements.

(d) All applications and all records of persons who have voted absentee both in all election suboffices and in the main office each day shall be available for public inspection the next day in the main office.

(e) Except as otherwise provided herein, the voting in each election suboffice shall be subject to the same statutes, rules, and regulations as the voting in the main office.

**Assistance to Voter; Use of English Language**

Subd. 15. If a voter is unable to sign his name because of illiteracy, any signature of the voter required by this section shall be made by the voter's affixing his mark, attested by two witnesses, but no

voter shall be entitled to any assistance in the marking of his ballot on the ground of illiteracy.

No assistance shall be given a voter in marking his absentee ballot except where the voter is unable to prepare the same himself because of some bodily infirmity, such as renders him physically unable to write or to see. If the voter is entitled to assistance, he may be assisted by the clerk, notary public, or other officer before whom the ballot is marked, or by some other person, acting as the witness to assist the voter in event of physical disability, but the person assisting the voter shall not suggest, by word or sign or gesture, how the voter shall vote, and shall confine his assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming the candidates and the political parties to which they belong, and he shall prepare the ballot as the voter himself shall direct. Where any assistance is rendered in marking an absentee ballot other than as allowed in this subdivision, the ballot shall not be counted but shall be void for all purposes.

In absentee voting by personal appearance at the clerk's office, any voter unable to speak or understand the English language may communicate with the clerk in some other language, and if the clerk is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the county. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the clerk: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by the clerk and each question, answer, or statement addressed to the clerk by the voter." When any language other than the English language is used either by the voter or by the clerk, any watcher present shall be entitled to request and receive a translation into the English language of anything spoken in some other language.

Subd. 16. Renumbered subdivision 4b by Acts 1965, 59th Leg., p. 1552, ch. 678, § 9, eff. June 18, 1965.

**Allocation of Absentee Votes for Determining Precinct Representation in County Conventions**

Subd. 17. The county clerk shall preserve on file in his office for a period of two years a copy of the precinct lists of absentee voters and persons voting a limited ballot under Section 37c of this code<sup>1</sup> prepared in accordance with Subdivision 11 of this section and Section 37d of this code,<sup>2</sup> for each biennial general election for state and county officers. For the purpose of computing the number of delegates to which each election precinct is entitled in the county convention of a political party whose conventions are governed by Section 212 of this code,<sup>3</sup> there shall be added to the number of votes cast for the party's candidate for Governor, as shown on the

election return for that precinct, a percentage of the votes cast by residents of that precinct by absentee ballot and limited ballot, using the number of voters shown on the aforesaid precinct lists as the basis of allocation, which percentage shall be the same as the percentage which the party's candidate for Governor received of the total votes for Governor cast at the precinct polling place, as shown on the return for that precinct. If the total number of votes actually counted by the absentee canvassing board differs from the number of votes shown on the precinct lists, the number on the precinct lists nevertheless shall be used as the basis of allocation under this subdivision.

<sup>1</sup> Article 5.05c.  
<sup>2</sup> Article 5.05d.  
<sup>3</sup> Article 13.34.

Electioneering near Absentee Voting Place

Subd. 18. During the hours that the clerk's office is open while absentee voting is in progress, the clerk shall prevent electioneering within the room or designated place where the absentee voting is being conducted and in any corridor of the same building, within thirty feet of the entrance to such room or place. During the period for absentee voting, he shall keep posted at the entrance to such room or place a sign on which shall be printed in large letters the words, "Place for Absentee Voting," and he shall keep posted in each corridor at a distance of thirty feet from the entrance a distance marker on which shall be printed in large letters the words, "Distance marker for absentee voting. No electioneering between this point and the entrance to the place for absentee voting." Any person who electioneers within the room or place for absentee voting or in any corridor within thirty feet of the entrance, during the period for absentee voting and while the clerk's office is open, shall be fined not exceeding five hundred dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 37; Acts 1957, 55th Leg., p. 100, ch. 49, § 1; Acts 1959, 56th Leg., p. 1055, ch. 483, §§ 1, 2; Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 14 to 18; Acts 1965, 59th Leg., p. 777, ch. 368, § 3; Acts 1965, 59th Leg., p. 1552, ch. 678, §§ 5 to 9; Acts 1967, 60th Leg., p. 937, ch. 414, § 2, eff. June 12, 1967; Acts 1967, 60th Leg., pp. 1871 to 1874, ch. 723, §§ 16 to 19, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 202, ch. 82, §§ 1 to 3, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, §§ 9 to 11, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1382, ch. 368, § 1, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2525, ch. 827, § 19; Acts 1973, 63rd Leg., p. 94, ch. 54, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 761, ch. 335, § 1, eff. Aug. 27, 1973.]

Art. 5.05a. Voting by New Residents of State in Presidential Elections

New Residents Eligible to Vote

Subd. 1. A person who has been a resident of this state for more than sixty days but less than one year prior to the date of a presidential election shall be entitled to vote for presidential and vice presidential electors in such election, but for no other offices, if

(1) he was either a qualified elector in another state immediately prior to his removal to this state or would have been eligible to vote in such other state had he remained there until such election, and

(2) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code,<sup>1</sup> except the requirements of residence and registration, and

(3) he complies with the provisions of this section.

Application for Presidential Ballot

Subd. 2. A person desiring to qualify to vote for presidential and vice presidential electors under this section is not required to register under the general voter registration laws of this state, but between the 60th day and the 45th day preceding the election, both dates included, he shall register by making an application to the county clerk of the county of his residence at the main office of the clerk or at any regularly maintained general branch office, in the form of an affidavit executed in duplicate in the presence of the county clerk or a duly authorized deputy, in substantially the following form:

State of Texas }  
 County of \_\_\_\_\_ }

I, \_\_\_\_\_, do solemnly swear that:

1. I am a citizen of the United States.
2. Before becoming a resident of this state, my legal residence was in the \_\_\_\_\_ precinct of the city of \_\_\_\_\_, county of \_\_\_\_\_, state of \_\_\_\_\_, and my local residence address was \_\_\_\_\_ street (post office address if no street address). I was a qualified elector in that state immediately prior to my removal to this state, or would have been eligible to vote in that state had I remained there until the next presidential election.
3. On the day of the next presidential election, I shall be at least 21 years of age. I have been a resident of Texas since \_\_\_\_\_, 19\_\_\_\_, now residing at \_\_\_\_\_, street (post office address if no street address), in the city of \_\_\_\_\_, \_\_\_\_\_ County.
4. Pursuant to Section 37a (Article 5.05a) of the Texas Election Code, I am qualified to vote for President and Vice President at the election to be held November \_\_\_\_\_, 19\_\_\_\_, and I hereby make application for a presidential and vice presidential ballot. I have not voted and will not vote otherwise than by this ballot at that election.

Signed \_\_\_\_\_  
 (Applicant)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed \_\_\_\_\_,  
 County Clerk of \_\_\_\_\_ County  
 By \_\_\_\_\_, Deputy

## Proof of Qualification in State of Former Residence

Subd. 3. Subject to the provisions of Subdivision 4 of this section, upon receipt of an application, the county clerk shall immediately forward the duplicate of the application to the registrar of voters, or equivalent official, of the county and state of the applicant's former residence, together with a request for proof that the applicant was a qualified voter in the state of his former residence immediately prior to his removal to Texas, or that he would have been eligible to vote in that state at the forthcoming presidential election had he remained there until such election and complied with the state's legal requirements for voting. The request shall include a form of certificate of proof. The forms of request for proof and certificate of proof to be sent to the official of the applicant's former residence shall be prescribed by the Secretary of State. The Secretary of State shall also furnish to each county clerk in this state the necessary information as to the appropriate official in each of the other states to whom the request for proof should be sent.

## Alternate Method of Proof

Subd. 4. If the applicant delivers to the county clerk an official voter registration certificate, voter identification card, or other similar document from the state of his former residence showing that he was registered as a voter in that state at the time of his removal therefrom, the county clerk shall not be required to obtain the certificate of proof required by Subdivision 3 of this section. The document evidencing the applicant's qualification in the state of his former residence shall be retained by the county clerk and attached to the application.

## Notification of Acceptance of Application

Subd. 5. If from the certificate of proof required in Subdivision 3 or a document meeting the requirements of Subdivision 4, and from the information on the application it appears that the applicant satisfies the conditions of Subdivision 1 of this section, the county clerk shall notify the applicant, in writing, that satisfactory proof of eligibility has been received and that he is entitled to vote in person for the offices of President and Vice President not sooner than the fifteenth day nor later than the fourth day prior to the forthcoming presidential election.

## Procedure for Voting

Subd. 6. Within the period specified in Subdivision 5, the applicant shall appear personally at the office of the county clerk or at a branch office for absentee voting and shall present his notification of eligibility, whereupon he shall be permitted to vote. The clerk may furnish the applicant with either a specially printed ballot on which no offices other than President and Vice President are printed, or he

may use the regular official ballot from which all other offices and all propositions are stricken, or on which it is otherwise shown that the voter was not entitled to vote on such other offices and propositions, before the voter receives the ballot. If absentee voting is being conducted on a voting machine, the voter may be allowed to cast his vote for President and Vice President on a voting machine, on which all other races are locked out before the voter enters the machine. The procedure for absentee voting by personal appearance in a countywide election shall be followed insofar as it can be made applicable and is not inconsistent with this section. The ballots and ballot stubs shall be deposited in the same boxes as the ballots and stubs of persons voting absentee by personal appearance, and the ballots shall be counted and return made thereof along with and on the same forms as the absentee ballots.

## Notation on List of Applicants

Subd. 7. When an applicant has been permitted to vote, the clerk shall note the fact on the applicant's notification of eligibility and shall file it with his application. He shall also enter on the posted list of applicants, required by Section 37d of this code,<sup>2</sup> a notation of the fact that the applicant has voted, with the date on which he voted.

## Definition of Word "State"

Subd. 8. As used in this section and Section 37b of this code,<sup>3</sup> the word "state" includes the District of Columbia.

[Acts 1967, 60th Leg., p. 1874, ch. 723, § 20, eff. Aug. 28, 1967.]

<sup>1</sup> Article 5.02.

<sup>2</sup> Article 5.05d.

<sup>3</sup> Article 5.05b.

### Art. 5.05b. Voting by Former Residents of State in Presidential Elections

## Former Residents Eligible to Vote

Subd. 1. A former resident of this state who has become a legal resident of another state of the United States may vote for presidential and vice presidential electors by absentee ballot in the county of his former residence if:

(1) on the day of the election he will not have resided in the state of his present residence a sufficient length of time to meet the residence requirements of that state for voting for presidential and vice presidential electors, and

(2) the period of time since he ceased to be a resident of this state is less than 24 months, and

(3) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code,<sup>1</sup> except the requirements of residence and registration, and

(4) at the time of his removal he was registered as a voter in this state, if he was then eligible to register, and

(5) he complies with the provisions of this section.

Application for Presidential Ballot

Subd. 2. A person desiring to vote under the provisions of this section shall register by making a written, sworn application to the county clerk of the county of his former residence for an absentee ballot for President and Vice President only, on a form to be prescribed by the Secretary of State and furnished by the county clerk. The application shall be made under the same rules as apply to regular absentee ballots, insofar as they can be made applicable and are not inconsistent with this section, except that it shall not be necessary that the application be accompanied by the applicant's voter registration certificate. However, if the application is not accompanied by a voter registration certificate which was current at the time of the applicant's removal from this state and the applicant was eligible to register at the time of his removal, the county clerk shall ascertain that the applicant's name was on the list of registered voters for the voting year in which he changed his residence before furnishing him with a ballot. If from the information contained on the application it appears that the applicant was not eligible to register as a voter at the time of his removal from this state but would have been eligible to register for the current voting year and to vote in the forthcoming presidential election if he had continued to reside in this state, no former registration shall be required of the applicant.

Secretary of State to Furnish Information

Subd. 3. The Secretary of State shall furnish to each county clerk in the state the necessary information to enable the county clerk to determine from such information and the information supplied by the applicant on his application form whether the applicant has resided in the state of his present residence a sufficient length of time to qualify to vote for presidential and vice presidential electors in that state.

Procedure for Voting

Subd. 4. Upon ascertaining that an applicant is entitled to vote under this section, the county clerk shall mail to him a ballot prepared in either of the manners specified in Subdivision 6 of Section 37a of this code,<sup>2</sup> together with a ballot envelope containing such markings and instructions as the Secretary of State prescribes, and a carrier envelope containing an appropriate affidavit, the form of which shall be prescribed by the Secretary of State, of the voter's eligibility to cast the ballot under this section. The procedure for absentee voting by mail shall be followed insofar as it can be made applicable and is not inconsistent with this section. The ballots shall be counted and return made thereof along with and on the same form as the other absentee ballots.

Notices of Applications Received from Other States

Subd. 5. All notices of applications of former residents of this state to vote for presidential electors as new residents of the state of their present residence, which are received by any other state or county officer of Texas, shall be forwarded by such officer to the county clerk of the county of the applicant's former residence in Texas. The county clerk shall file each notice received by him from another state indicating that a former resident of this state has made application to vote at a presidential election in another state and shall maintain an alphabetical index thereof, for a period of six months after the election.

[Acts 1967, 60th Leg., p. 1874, ch. 723, § 20, eff. Aug. 28, 1967.]

<sup>1</sup> Article 5.02.  
<sup>2</sup> Article 5.05a.

Art. 5.05c. Voting by Persons Having Less than Six Months' Residence in County

Persons Eligible to Vote

Subd. 1. A person who is a qualified elector as defined in Section 34 of this code<sup>1</sup> except for the requirement of six months' residence in the county immediately preceding the election shall nevertheless be entitled to vote on all offices, questions or propositions to be voted on by electors throughout the state, including electors for President and Vice President of the United States, for which the person would be eligible to vote if he fulfilled the county residence requirement. A person having less than six months' residence in the county, if otherwise eligible, shall be entitled to vote for any district office or at any other election of a district composed of territory situated in more than one county if he has resided in the district for the last six months preceding the election. Where a district consists of only a part of one county or where a part of a county is joined with territory situated in another county or counties to form a district, a person who has resided in the county for the last six months and is a resident of the district on the date of the election fulfills the local residence requirement for voting in a district election.

Registration; Transfer of Registration

Subd. 2. No person shall be eligible to vote under this section unless he is registered as a voter under the general voter registration laws of this state for the year in which the election is held or is eligible to vote under the special registration provisions applicable to persons entitled to use the federal post card application for absentee ballot. A voter who has changed the county of his residence since receiving his registration certificate need not comply with the provisions of this code on transfer of registration before being permitted to vote.

## Application for Limited Ballot; Procedure for Voting

Subd. 3. A person having less than six months' residence in the county who is entitled to vote a limited ballot as stated in Subdivision 1 of this section shall be permitted to vote upon making a written, signed application for a limited ballot to the county clerk of the county of his residence at the time of the election, upon an official application form to be prescribed by the Secretary of State and furnished by the county clerk. The procedure for voting a limited ballot shall be similar to the procedure for absentee voting. If the voter meets the requirements of Section 37 of this code<sup>2</sup> for voting an absentee ballot by mail, he shall be permitted to vote the limited ballot by mail under the procedure for absentee voting by mail upon submitting both an application for a limited ballot and an application for an absentee ballot. Otherwise, he shall vote by personal appearance during the period for absentee voting by personal appearance and under the procedure for voting by personal appearance in county-wide elections insofar as it can be made applicable and is not inconsistent with this section. Ballots cast under this section shall be counted and return made thereof along with and on the same forms as the absentee ballots.

## Ballot Form

Subd. 4. When paper ballots are used, the voter shall be furnished a regular official ballot for the election, from which all offices and propositions on which the voter is not entitled to vote have been stricken; and when a voting machine is used, all offices and propositions on which the voter is not entitled to vote shall be locked out before the voter is permitted to cast his ballot. When absentee voting by personal appearance is being conducted on a voting machine, the clerk may permit persons voting under this section by personal appearance to cast their ballots on the voting machine or he may furnish them with paper ballots, at his option.

## Record of District Offices Voted On

Subd. 5. The Secretary of State shall furnish to each county clerk the necessary information on the composition of the various districts to enable the clerk to determine whether a person entitled to vote a limited ballot for statewide offices is also entitled to vote for any district offices. The clerk shall note on each voter's application a list of all district offices for which he is permitted to vote.

[Acts 1967, 60th Leg., p. 1878, ch. 723, § 20, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 12, eff. Sept. 1, 1969.]

<sup>1</sup> Article 5.02.

<sup>2</sup> Article 5.05.

### Art. 5.05d. General Provisions on Voting by Persons not Meeting Full Residence Requirements

## Lists of Applicants to be Posted

Subd. 1. The county clerk shall post at a conspicuous place in his office, for public inspection, a complete list of persons who have applied for a

ballot under Section 37a, 37b, or 37c of this code,<sup>1</sup> stating thereon the applicant's name, address, precinct of residence, the section of this code under which the application was made, and the date on which the ballot was delivered or mailed, which list shall be kept up from day to day. The names of persons applying for ballots under Section 37c shall be included on the precinct lists of absentee voters which the clerk furnishes to the presiding judges of the election, as provided in Subdivision 11 of Section 37 of this code.<sup>2</sup>

## Preservation of Applications; Inspection

Subd. 2. Applications and accompanying papers received pursuant to Sections 37a, 37b, and 37c of this code shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots and shall be open to public inspection under the same rules as apply to applications for absentee ballots.

[Acts 1967, 60th Leg., p. 1879, ch. 723, § 20, eff. Aug. 28, 1967.]

<sup>1</sup> Articles 5.05a, 5.05b and 5.05c.

<sup>2</sup> Article 5.05.

### Art. 5.06. Absentee Ballots

The ballot used in absentee voting, except where absentee voting is conducted on voting machines, shall be the stub ballot provided for elsewhere in this Code. If the name of the elector does not appear on the reverse side of the stub, an election judge shall write the name of the elector on the back of said stub, together with his own signature, before depositing same in the stub box. The stub box shall be delivered by the canvassers after the votes are counted to the district clerk, the ballot box to the county clerk and the returns to the proper official as provided by law for regular polling places.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 38; Acts 1959, 56th Leg., p. 1055, ch. 483, § 3.]

### Art. 5.07. To Vote in City Elections

All qualified electors of this State, as described in the two preceding Sections [Arts. 5.05, 5.06] who shall have resided for six (6) months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who own taxable property in the city or town where such election is held and who have duly rendered the same for taxation; and all electors shall vote in the election precinct of their residence.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 39.]

### Art. 5.08. Rules for Determining Residence

(a) As used in this code, the word "residence" means domicile; i. e., one's home and fixed place of habitation to which he intends to return after any temporary absence.

(b) For the purpose of voting, residence shall be determined in accordance with the common law

rules as enunciated by the courts of this state and the following statutory rules; but in case of a conflict, the statutory rules shall control.

(c) A person shall not be considered to have lost his residence by leaving his home to go to another place for temporary purposes only.

(d) A person shall not be considered to have gained a residence in any place to which he has come for temporary purposes only, without the intention of making such place his home.

(e) The residence of a single person; or of a married person permanently separated from his or her spouse, is considered to be where such person usually sleeps at night, but if it be a temporary establishment, or for a transient purpose, it shall not be so considered.

(f) For a married man not permanently separated from his wife, the place where his family lives shall be considered his residence, but if it be a temporary establishment for his family, or for transient purposes, it shall not be so considered.

(g) If a married man has his family living in one place and he does business in another, the former shall be considered his residence, but when a man has taken up his abode at any place with the intention of remaining there and making it his home, and his family refuses to reside with him, then such place shall be considered his residence.

(h) The residence of a married woman not permanently separated from her husband is considered to be the place where her husband has his residence, but a married woman not living in a household with her husband may establish a separate voting residence from that of her husband.

(i) The residence of one who is an officer or employee of the government of this state or of the United States shall be construed to be where his home was before he became such officer or employee unless he has become a bona fide resident of the place where he is in government service or of some other place. For the purpose of this section, teachers and other professional personnel employed in the public free school system of this state shall be considered to be employees of the government of this state.

(j) No person in the military service of the United States shall acquire a residence in this state while he is living on a military post in quarters which he is required to occupy. A person in military service who is permitted to choose his place of abode shall not be considered to have acquired a residence merely in consequence of his presence at the place where he lives while performing his military duties; and such person shall not be considered to have acquired a residence unless he intends to remain there and to make that place his home indefinitely, both during the remainder of his military service whenever military duties do not require his presence elsewhere, and after his military service is terminated.

(k) The residence of a student in a school, college, or university shall be construed to be where his home was before he became such student unless he

has become a bona fide resident of the place where he is living while attending school or of some other place. A student shall not be considered to have acquired a residence at the place where he lives while attending school unless he intends to remain there and to make that place his home indefinitely after he ceases to be a student.

(l) The residence of an inmate of a public eleemosynary institution shall be construed to be where his home was before he became such inmate unless he has become a bona fide resident of the place where the institution is located or of some other place. No person who is an inmate of a prison or who is an involuntary inmate of any hospital or other eleemosynary institution shall acquire a residence, while he is an inmate, at the place where the institution is located.

(m) The residence of a person under 21 years of age who is not married or has not been married or has not had the disabilities of minority removed through a proceeding in a court of competent jurisdiction is at the place of residence of the parent or parents, or other person standing in loco parentis, having custody of the minor. The residence of a person under 21 years of age who is married or has been married or has been emancipated from the disabilities of minority by court order is determined in accordance with the rules applying to persons of full age.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 40; Acts 1963, 58th Leg., p. 1017, ch. 424, § 19; Acts 1967, 60th Leg., p. 1879, ch. 723, § 21, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2528, ch. 827, § 25, eff. Aug. 30, 1971.]

**Art. 5.09. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

#### **Art. 5.09a. Registrar of Voters**

The county tax assessor-collector of each county in this State shall be the registrar of voters in that county; and as used in this Code, the term "registrar of voters" or "registrar" means the county tax assessor-collector. He shall be responsible for the registration of voters, keeping of records, preparation of lists of registered voters, and such other duties incident to voter registration as are placed upon him by law. The duties here imposed on the county tax assessor-collector are in addition to his other duties imposed by law, and the expenses of his office incident to the performance of these duties shall be borne by the county. Any of these duties, except the hearing of appeals on denial of registration and the hearing of challenges of registration, may be performed through a deputy or deputies. The assessor-collector shall not make any charge against a voter for performing any duty incident to voter registration. The tax assessor-collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this Code connected with his official duties. The registration records, the applications for registration, and the duplicate registration certificates on file in the

tax assessor-collector's office shall be open for public inspection at all times when the office is open. [Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2.]

**Art. 5.10. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.10a. Persons Entitled to Register**

A person is entitled to register as a voter in the precinct in which he has his legal residence (i. e., domicile), as defined in Section 40 of this code,<sup>1</sup> if:

(1) on the date of applying for registration he is a citizen of the United States and is subject to none of the disqualifications, other than nonage, stated in Section 33 of this code;<sup>2</sup> and

(2) within 30 days after applying for registration he will be 18 years of age or older and will have resided in the State for one year.

However, no person may vote at any election unless he fulfills all the qualifications of an elector for that election.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2509, ch. 827, § 2, eff. Aug. 30, 1971.]

<sup>1</sup> Article 5.08.

<sup>2</sup> Article 5.11a.

**Art. 5.11. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.11a. Period for Registration; Period for which Registration is Effective**

Subd. 1. A "voting year" is a period of one year beginning on March 1 of each calendar year. Normally, a registration is effective for three successive voting years, as more fully stated in Subdivisions 2 and 3 of this section, subject to extension or renewal as provided in Section 50b of this code.<sup>1</sup>

Subd. 2. The first voting year under this law begins on March 1, 1972. An initial registration period under this law begins on October 1, 1971, and continues through January 31, 1972. Notwithstanding the provisions of Section 42a of this code,<sup>2</sup> a person may register at any time during this period if he has already attained the qualifications required by Section 42a or will attain them before April 1, 1972. A registration during this period becomes effective on March 1, 1972, and continues in effect for the 1972, 1973, and 1974 voting years, subject to extension or renewal as provided in Section 50b of this code. On applications mailed to the registrar on or before January 31 but not received by the registrar until after that date, the registrar shall treat each application as having been made in accordance with Subdivision 3 of this section, with registration to become effective on the 31st day following its receipt.

Subd. 3. Beginning on February 1 after the close of the registration period provided for in Subdivision 2 of this section, registration shall be conducted at all times that the registrar's office is open for business. A registration on or after that date becomes effective on the 31st day following and is effective

for the voting year in which that date falls and the succeeding two voting years, except that a registration on or after the first day of October and more than 30 days before the end of the voting year is effective for the remainder of that voting year and for the succeeding three voting years. Each registration is subject to extension or renewal as provided in Section 50b of this code. A person is deemed to have registered on the date that his application is received by the registrar.

Subd. 4. This subdivision states an exception to the rule stated in Subdivision 3 of this section in regard to the effective date of a registration. Any person who, at the time of applying for registration, comes within a category of persons eligible to vote by absentee ballot without regular registration through use of the federal post card application for absentee ballot, as provided in Subdivision 2a of Section 37 of this code,<sup>3</sup> or who came within such a category at any time within six months before the date of his application, may register at any time, and the registration becomes effective for voting on the fifth day following issuance of the registration certificate if the registrant is otherwise qualified to vote on that date.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2509, ch. 827, § 3, eff. Aug. 30, 1971.]

<sup>1</sup> Article 5.18b.

<sup>2</sup> Article 5.10a.

<sup>3</sup> Article 5.05.

**Art. 5.11a-1. Expired**

This article, enacted by Acts 1967, 60th Leg., p. 1, ch. 1, § 1, provided for registration for run-off elections held during February, 1967.

**Art. 5.11b. Registration for First Voting Year**

(1) Subject to the exception stated in subsection (2) of this Section, the registration certificate form to be used for registering persons to vote during the first voting year beginning on the first day of February immediately following the effective date of this Section shall be the certificate form prescribed in Section 46a of this Code,<sup>1</sup> except that the heading shall be "Voter Registration Certificate for the Period Beginning February 1, 19\_\_ and Ending February \_\_, 19\_\_" (the proper dates to be filled in).

(2) If this Section becomes effective by virtue of a proclamation of the Governor issued subsequent to June 30, 1966, resulting from court invalidation of the requirement for payment of the poll tax as a condition for voting, the registration certificate form to be used for registering persons to vote during the voting year beginning on the first day of February immediately following the effective date of this Section shall be the poll tax receipt form prescribed by Section 46 of this Code<sup>2</sup> or the exemption certificate form prescribed by Section 48 of this Code.<sup>3</sup> The poll tax receipt form shall be used for persons subject to payment of the tax, and the exemption certificate form shall be used for persons exempt from its payment; provided, however, that a registration shall not be rendered invalid by use of the form not prescribed for the particular registrant. If at the time of registering the registrant pays the

poll tax levied against him, the poll tax receipt form shall serve both as a receipt for payment and as a record of registration. If a poll tax is not collected from the registrant, the registrar shall issue a receipt on which the words "Poll tax not paid" have been stamped, written or printed. The original of the poll tax receipt or exemption certificate shall be issued to the registrant to identify him in voting, and the duplicate shall be retained by the registrar as his record of the registration.

All persons who were issued poll tax receipts or exemption certificates prior to the effective date of this Section, for use in voting during the ensuing voting year, and whose names would have been placed on either the regular list of qualified voters or the list of voters qualified to vote in federal elections only, if Sections 34a and 54 of this Code<sup>4</sup> had not been repealed, shall be deemed to have registered in accordance with the requirements of this registration law, and the registrar shall include the names of such persons on the list of registered voters for the voting year beginning on the first day of February immediately following the effective date of this registration law.

(3) This Section shall apply only to elections held during the first voting year under this registration law, and shall expire on the first day of March following the close of that voting year.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2.]

<sup>1</sup> Article 5.14a.

<sup>2</sup> Article 5.14.

<sup>3</sup> Article 5.16.

<sup>4</sup> Articles 5.02a, 5.22.

#### Art. 5.11b-1. Expired

This article, enacted by Acts 1967, 60th Leg., p. 938, ch. 414, § 3, provided for supplemental registration for 1967 voting year by persons over 60 years of age, and expired on Mar. 1, 1968 by its own terms.

#### Art. 5.11c. Expired

This article, enacted by Acts 1971, 62nd Leg., p. 2, ch. 2, § 1, provided for supplemental registration for 1971 voting year to begin on the first day of February, 1971, and end on the last day of February, 1971.

#### Art. 5.12. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.12a. Repealed by Acts 1971, 62nd Leg., p. 2526, ch. 827, § 21, eff. Aug. 30, 1971

Prior to repeal, this article was amended by Acts 1967, 60th Leg., p. 938, ch. 414, § 4.

#### Art. 5.12b. Repealed by Acts 1971, 62nd Leg., p. 2526, ch. 827, § 21, eff. Aug. 30, 1971

The repealed article, relating to registration by persons in military service or recently discharged therefrom, was added by Acts 1969, 61st Leg., p. 2662, ch. 878, § 13.

#### Art. 5.13. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.13a. Mode of Applying for Registration

Subd. 1. A person may apply for registration in person or by mail. Each applicant shall submit to the registrar of the county in which he resides a written application which supplies all the information required by Section 45b of this code.<sup>1</sup> The Secretary of State shall prescribe the application

form. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing voter registration certificates and a different form for use in counties not using those methods, but the registrar in each county shall accept any application made upon any form prescribed by the Secretary of State which supplies all the necessary information for registration. In addition to other requirements, the application form shall contain the following statement: "I understand that the giving of false information to procure the registration of a voter is a felony." It shall also contain a space for recording the number of the voter's registration certificate.

Subd. 2. The application shall be signed by the applicant or his agent. However, if the person making the application is unable to sign his name either because of physical disability or illiteracy, he shall affix his mark, if able to do so, which shall be attested by a witness, whose signature and address shall be shown on the application. If a person making the application is physically unable to make a mark, the witness shall so state on the application.

Subd. 3. When a properly executed application is received by the registrar, he shall make out a registration certificate and shall either deliver the original certificate to the voter or his agent in person or shall mail it to the voter at his permanent address; or if the voter is temporarily living outside the county and requests that the certificate be mailed to the temporary address, the registrar shall mail it to the temporary address. When application is made in person, the registrar may make out and deliver the certificate immediately or he may defer preparation of the certificate until a later time, to be mailed to the voter or held for delivery in person if the applicant so directs. If the certificate is mailed to the voter, the registrar shall mail it in time for the voter to receive it before the date on which it becomes effective for voting.

Subd. 4. The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant, and may receive the registration certificate. However, none of these persons may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subdivision may act as agent for a person in applying for registration. Except as permitted in this subdivision, a person who wilfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a misdemeanor.

Subd. 5. A registrar of voters who knowingly issues a registration certificate to a person other than the applicant or his lawful agent, or who knowingly mails or delivers a registration certificate to a person other than the applicant or his lawful agent, is guilty of a misdemeanor.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1969, 61st Leg., p. 2662, ch. 878, § 14, eff. Sept. 1, 1969; Acts

1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 1; Acts 1971, 62nd Leg., p. 2510, ch. 827, § 4, eff. Aug. 27, 1971.]

<sup>1</sup> Article 5.13b.

#### Art. 5.13b. Information Required on Application

An application for a voter registration certificate shall show the following information:

1. The applicant's name, sex, and post-office address (or if living in an incorporated city or town, his street address).

2. A statement of the applicant's age. If the applicant has not attained 21 years of age, the application shall show his date of birth by month, day and year. If the applicant has already attained the age of 21 years, it is sufficient for the applicant to state that he is over that age. In lieu of showing the applicant's age in terms of a number of years, age may be shown by stating the date of birth; and in case that form of statement is called for on the application, it is sufficient for an applicant who has attained 21 years of age to state the year of his birth without giving the month and day, or to state that he was born prior to a certain year which shows him to be over that age.

3. If the applicant is under 21 years of age, whether the applicant is or has been married or has had the disabilities of minority removed by court action; and if not, the name and address of the applicant's parents or other person standing in loco parentis.

4. The applicant's occupation. The application form shall also contain a space for the applicant to check the appropriate item of information if he is in active military service or is enrolled as a student in a school, college, or university.

5. A statement that the applicant has resided in the State more than one year, in the county more than six months, and in the city or town (if a resident of an incorporated city or town) more than six months immediately preceding the date of application; or if not a resident for such length of time, a statement of the date on which he became a resident of the State, county, or city, as the case may be.

6. A statement that the applicant is a citizen of the United States.

7. If the applicant was registered in any other county of this State within the preceding three years, the name of the county in which he was registered and his last residence address in that county.

8. If the application is made by an agent, a statement of the agent's relationship to the applicant.

The application form shall contain a space for showing the address to which the certificate is to be mailed, if it is to be mailed to a temporary address. It shall also contain a space for showing the election precinct in which the applicant resides, but an application shall not be deficient for failure to list the

number or name of the precinct or for listing an incorrect number or name where the applicant's correct address is given. It may also contain a space for the applicant's social security number and telephone number, but an application shall not be deficient for failure to list these numbers.

[Acts 1967, 60th Leg., p. 939, ch. 414, § 5, eff. June 12, 1967; Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 2; Acts 1971, 62nd Leg., p. 2511, ch. 827, § 5, eff. Aug. 30, 1971.]

Art. 5.14. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.14a. Registration Certificate Forms; Information Required on Certificate

Subd. 1. Upon receiving the application of a voter who is entitled to register, the registrar shall prepare a voter registration certificate for the voter on a form prescribed by the Secretary of State. The Secretary of State may prescribe one or more forms for use in counties using electronic data processing methods for issuing certificates and a different form for use in counties not using those methods. The form shall be prepared in duplicate. The original shall be issued to the voter and the duplicate copy shall be retained by the registrar for his use in making up the list of registered voters and in maintaining a numerical record of the certificates issued.

Subd. 2. The registration certificates for each county shall be serially numbered, beginning with No. 1 for registrations for each voting year, and the numbers shall be preceded by a letter or combination of letters to indicate the voting year, beginning with the letter A and proceeding in alphabetical order for each new voting year (i. e., the numbering shall begin with No. A-1 for the first year, with No. B-1 for the second year, No. AA-1 for the 27th year, and so on). The date on which the certificate is issued shall be shown on the certificate, but no date indicating the duration of its effectiveness shall be shown.

Subd. 3. Each certificate shall show the voter's name, age, address, election precinct number, a place for the voter's signature, and the date on which the certificate is issued. The certificate may also show other information which is furnished on the application, at the option of the registrar. It shall contain or be accompanied by a written instruction to the voter that the certificate is to be signed by the voter personally immediately upon receipt, if the voter is able to write his name.

Subd. 4. At the time he prepares the registration certificate, the registrar shall enter the registration certificate number in the appropriate space on the voter's application for registration.

Subd. 5. When under any provision of this code the registrar is directed to make a change or correction on a registration certificate, in his discretion he may issue a replacement certificate to the voter instead of making the change or correction on the existing certificate.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2512, ch. 827, § 6, eff. Aug. 30, 1971.]

**Art. 5.15. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.15a. Registration Record Sheets; Registration Files**

Subd. 1. As soon as practicable after a registration certificate is issued, the registrar shall make up for the voter a registration record sheet, on a form prescribed by the Secretary of State. The record sheet shall bear the same serial number as the registration certificate and shall show the voter's name, permanent residence address, and election precinct number, and optionally the voter's social security number and telephone number. It shall also show the voter's temporary address if one is shown on his application. The form shall contain suitable space for recording change of residence, transfer of registration to another election precinct, a record of the elections at which the voter votes, and information pertinent to cancellation of registration.

Subd. 2. (a) As they are made up, the registration record sheets shall be filed alphabetically by election precincts in an active registration record file, and they shall remain in that file as long as the registration continues in effect.

(b) The registrar shall also maintain an inactive registration record file, which shall be arranged in alphabetical order for the entire county. The registrar shall place into this file the record sheet for each voter whose registration is cancelled. When a registration is cancelled, the registrar shall enter on the record sheet the date of cancellation and the reason. The record sheet shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

Subd. 3. (a) The applications on which registration certificates are issued shall be filed alphabetically for the entire county in an active application file and shall remain in that file as long as the registration continues in effect.

(b) The registrar shall also maintain an inactive application file, which shall be arranged in alphabetical order for the entire county. The registrar shall place into this file all applications which are rejected. He shall also transfer to the inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of rejection or cancellation, after which it may be destroyed.

Subd. 4. (a) After the registrar adds a voter's name to the list of registered voters from the duplicate registration certificate, he shall file the duplicate in an active duplicate registration certificate file. An active file for each voting year shall be maintained in numerical order for the entire county.

(b) When a registration is cancelled, the registrar shall enter the date of cancellation on the duplicate certificate and shall transfer it to an inactive file arranged numerically for each voting year. The duplicate shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

Subd. 5. Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, the duplicate registration certificates, and the registration record sheets shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 3; Acts 1971, 62nd Leg., p. 2513, ch. 827, § 7, eff. Aug. 30, 1971.]

**Art. 5.16. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.16a. Correction of Errors on Certificates; Lost Certificates**

Subd. 1. Correction of error. When after issuance of a registration certificate it is discovered that an error has been made in filling out the blanks on the certificate through mistake of the registrar or through mistake of the voter in supplying the information, the voter may present the certificate to the registrar for correction and the registrar shall correct the information on the original certificate and on the registration records on file in his office.

Subd. 2. Error in election precinct. Except as permitted in Section 50a of this code,<sup>1</sup> no person is entitled to vote in a precinct of which he is not a resident and an election officer shall not knowingly permit a voter to do so. However, where a voter is erroneously registered in a precinct in which he does not reside and the election officer permits him to vote without knowing of the erroneous registration, in an election contest a ballot cast in that precinct shall be given effect as to any offices or propositions on which the voter would have been entitled to vote in the precinct in which he resides unless it is proved that the voter intentionally gave false information to procure his registration in the wrong precinct, in which event the ballot is void for all purposes.

If an error in the election precinct has not been corrected on the certificate at the time the voter offers to vote at an election, he may vote in the precinct of his residence, if otherwise qualified, by making and leaving with the presiding judge of the election an affidavit that he is a bona fide resident of that precinct and qualified to vote at that

election, and that the error on the certificate was not caused by an intentional misrepresentation on his part.

Subd. 3. Name omitted from list of registered voters. Where a voter's name is not shown on the precinct list of registered voters but the voter presents his registration certificate showing him to be registered in that precinct, the election officers shall permit him to vote and shall add his name, address, and registration certificate number to the list.

Subd. 4. Challenge of voter. Where a voter who does not present his registration certificate to the election officers claims to be registered in the precinct where he offers to vote, or claims to be erroneously registered in some other precinct, the presiding judge, if not satisfied as to his right to vote, may refuse to accept him unless he complies with the provisions of this code relative to challenge of a voter at the polling place. Where a voter claiming to be registered in the precinct is accepted, the presiding judge shall add the voter's name and address to the list of registered voters, with the notation that he voted on an affidavit of a lost certificate.

Subd. 5. Correction of registration records. Within 10 days after the election, the officer to whom the list of registered voters is returned shall notify the registrar of any additions which the election officers made to the list of registered voters. Within the same period, the officer to whom the affidavit of erroneous election precinct is returned shall notify the registrar of the names and other information contained on the affidavits used in the election. The registrar shall take the necessary steps to verify and correct the registration records, including a recall of the original registration certificates for correction where necessary. If the registrar finds that a person who voted is not registered, he shall report the matter to the prosecuting attorney.

Subd. 6. Replacement of lost certificate. If a voter to whom a registration certificate has been issued presents to the registrar his affidavit that the certificate has been lost or destroyed, the registrar shall issue to the voter a replacement certificate as a single-copy document, showing the same registration number and the same information as shown on the original certificate. The registrar shall make a notation on the face of the certificate showing it to be a replacement. He shall attach the affidavit to the voter's application.

A person who makes an affidavit that a registration certificate has been lost or destroyed, knowing the affidavit to be false, is guilty of a misdemeanor.

Subd. 7. Voting on affidavit of lost certificate. Notwithstanding Subdivision 6 of this section, a voter whose registration certificate has been lost or destroyed may vote without obtaining a replacement, upon making and leaving with the election

officers an affidavit of loss as provided elsewhere in this code.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2514, ch. 827, § 8, eff. Aug. 30, 1971.]  
<sup>1</sup> Article 5.18a.

#### **Art. 5.16b. Abolition of Precinct or Alteration of Boundary**

In the event the precinct in which a registered voter resides is abolished or has its boundary altered, the registrar shall change the voter's registration records to show him to be registered in the proper precinct and shall mail a notice of the change to each voter affected, instructing him to make the change on his registration certificate. If the registrar is unable to determine the proper precinct of a voter from the information on the application, he shall mail a request to the voter for such additional information as will enable him to determine the proper precinct, and until the information is received he shall not place the voter's name on the list of registered voters for any precinct.

[Acts 1972, 62nd Leg., p. 2515, ch. 827, § 9, eff. Aug. 30, 1971.]

#### **Art. 5.17. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

#### **Art. 5.17a. Challenge of Registration; Appeal**

(1) Challenge of applicant. Any person applying for registration may be challenged by the registrar or deputy taking his application or by any registered voter of the county. If after hearing and considering the challenge the officer taking the application is satisfied as to the applicant's entitlement to registration, he shall register the applicant, but if not so satisfied, he shall refuse to register the applicant. If refusal has been by a deputy registrar, the applicant may appeal to the registrar, who shall decide the challenge within seven days. When the registrar refuses to register an applicant, the applicant may appeal from the decision of the registrar to a district court of the county within thirty days after the registrar's decision, and the decision of the district court shall be final.

(2) Challenge of registered voter. Any registered voter shall have the right to challenge the registration of any other registered voter in his county by filing with the registrar of voters a sworn statement setting out the grounds for such challenge. The registrar shall give notice to the person whose registration has been challenged, and a hearing shall be held and a ruling made thereon. Either party to the controversy may appeal from the decision of the registrar to a district court of the county of registration within thirty days after the registrar's decision, and the decision of the district court shall be final. A challenged voter may continue to vote until a final decision is made canceling his registration.

(3) Jurisdiction of district court; trial of appeal. The district courts of this State shall have jurisdiction to hear and determine appeals from decisions of the registrar refusing an application for registration and from decisions of the registrar either canceling

or refusing to cancel a registration. The trial in the district court shall be de novo. The court shall give priority to the appeal if an election is pending within sixty days.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2.]

**Art. 5.18. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967.**

**Art. 5.18a. Change of Residence; Cancellation or Transfer of Registration**

Subd. 1. Change of residence within precinct. A registered voter who changes his place of residence within the election precinct shall give written notice to the registrar of the change of address and present his registration certificate to the registrar. The registrar shall make the necessary change on the certificate and on the registration records in his office and shall return the certificate to the voter. He shall attach the notice to the voter's application, and shall change the address on the list of registered voters when he prepares the next annual list.

Subd. 2. Change of residence to another precinct within county. A registered voter who changes his residence to another election precinct within the county may vote in the precinct of his former residence, if otherwise qualified, during the first 30 days after the removal, but not thereafter, in any election other than an election which is subject to Section 35 of this code.<sup>1</sup> If he obtains a transfer of his registration to the precinct of his new residence during the 30-day period, he may vote only in the precinct of his new residence after the fourth day following the transfer. He may not vote in the precinct of his new residence before the fifth day following the transfer.

To obtain a transfer of his registration, the voter shall present his registration certificate to the registrar with a written, signed request that his registration be transferred to the precinct of his new residence. Upon receiving a request for transfer, the registrar shall make the necessary changes on the registration certificate and on the registration records in his office and shall return the certificate to the voter. He shall attach the request to the application and shall transfer the registration record sheet to the file for the precinct of the voter's new residence.

Subd. 3. Change of residence to another county. A registered voter who moves from one county to another within the State must re-register in the county of his new residence in the same manner as an initial registrant. However, during the first six months after removal the voter may vote a limited ballot, as provided in Section 37c of this code,<sup>2</sup> by either presenting a current registration certificate issued in the county of his former residence or making an affidavit that it has been lost or misplaced.

Subd. 4. Notification to registrar in county of former residence. Between March 1, 1972, and February 28, 1975, when the registrar receives an appli-

cation for registration of a voter who was registered in some other county for any period of time after March 1, 1972, he shall notify the registrar of that county, giving him the voter's name, former residence address, and present residence address. Thereafter, when the registrar receives an application of a voter who was registered in some other county within the preceding three years, he shall notify the registrar of that county. Upon receipt of the notice, the registrar of the county wherein the voter was formerly registered shall cancel the registration in that county.

Subd. 5. (a) Before March 1, 1972, the registrar in each county shall take the necessary steps to have each postmaster in his county furnish him with the residential change-of-address information service available to election boards and registration commissions under United States Post Office Department regulations. The registrar shall request the information on all residential mail patrons within the county, retroactive to the date which the registrar deems suitable, but not earlier than October 1, 1971, to enable him to correct the registration records on voters who have moved after registering for the voting period which begins on March 1, 1972. He shall request that the information thereafter be furnished on a monthly basis, and from time to time he shall take whatever action is necessary to keep the request for this service in an active status at all times. Immediately after this section takes effect, the Secretary of State shall issue instructions to each registrar on how to proceed to obtain the service.

(b) Except as provided in Paragraph (c) of this subdivision, the registrar and his employees may not use or permit any other person to use the information received from the post office for any purpose other than correcting the registration records and lists of registered voters maintained in his office. A violation of this provision is a misdemeanor.

(c) Where a post office serves patrons living in more than one county, the postmaster and the registrars of the different counties shall agree upon an arrangement for furnishing all the change-of-address cards to one or the other of the registrars or for separating the cards and furnishing them to the several registrars in accordance with a stipulated plan. Within 30 days after a registrar receives the cards from the post office, he shall transcribe the information with respect to each person who resides in a different county onto a form prescribed by the Secretary of State, or shall duplicate or reproduce the information in some other manner agreeable to the postmaster and approved by the Secretary of State, and shall forward it to the registrar of the county in which the person resides. Each registrar shall assemble the necessary data to enable him to determine with reasonable accuracy in which county a person lives from his street address or rural route address. Where the patron was receiving his mail at a post-office box, the registrar receiving the information initially shall check his files to identify the

patron as a registered voter insofar as he is able to do so, and shall forward the change-of-address information on all unidentified patrons to the registrar of the other county. He shall also follow this procedure in other doubtful cases.

(d) If a person requesting a permanent change of address is registered as a voter, or where the change of address is requested for an entire family, if any other person having the same surname and address is registered, the registrar shall send a notice to each such person at the address on the registration record and at the new address furnished on the change-of-address form, requesting him to verify his current residence address and informing him of the necessity for changing the registration records if there has been a change in his legal residence. The notice shall state that the voter's registration will be cancelled if the registrar does not receive a reply within 30 days from the date on which the notice is mailed. If the voter replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is received, the registrar shall cancel the registration and shall notify the voter of the cancellation by registered or certified mail at the address given on the change-of-address form with a return receipt requested. The registrar shall reinstate the registration if within 30 days after the cancellation the voter furnishes information showing that he is still eligible for registration in that county. The notice of cancellation shall inform the voter of this right to reinstatement.

(e) Where a postal patron was receiving his mail at a post-office box rather than a street address or a rural route address, the registrar shall undertake to identify the patron as a registered voter by checking the alphabetical precinct or county files for the same or a similar name. Where more than one person of the same or similar name is registered, the registrar shall use his discretion in pursuing his effort to identify the patron.

(f) The Secretary of State shall keep the registrars informed of any changes in postal regulations which affect the procedures for utilizing the change-of-address service as a means for updating the registration records. If a change in postal regulations makes any of the procedures outlined in this subdivision impracticable, the Secretary of State is authorized to devise new procedures and to issue directives putting them into effect, with a view to utilizing the service in the most effective manner to obtain the full benefit of the information furnished.

Subd. 6. The Secretary of State shall prescribe forms for the various documents required by this section. However, the registrar may also accept and use forms other than those prescribed by the Secretary of State.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1969, 61st Leg., p. 2662, ch. 878, § 15, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2516, ch. 827, § 10, eff. Aug. 30, 1971.]

<sup>1</sup> Article 5.03.  
<sup>2</sup> Article 5.05c.

#### Art. 5.18b. Extension or Renewal of Registration by Voting or by Request for Renewal; Cancellation for Failure to Renew

Subd. 1. Beginning with the elections held during the 1972 voting year, whenever a registered voter votes in a primary or general election for nomination or election of State and county officers, his registration is automatically extended or renewed for the succeeding three voting years unless, prior to the beginning of the first succeeding year, the registration is cancelled under some provision of this code.

Within 30 days after each second (runoff) primary for nomination of State and county officers, the presiding officer of the county committee, board, or other body which is responsible for furnishing supplies for the primary elections of each political party shall deliver to the registrar the lists of registered voters used at the party's general primary and runoff primary in each election precinct in the county, marked to show the names of persons who voted at the election as provided elsewhere in this code. Within 30 days after the date of each general election for State and county officers, the county clerk shall deliver to the registrar the lists of registered voters used at the general election, marked to show the names of persons who voted at the election. From these lists, the registrar shall make a record on the registration record sheets of the voters who voted at these elections and shall extend or renew their registrations for the succeeding three voting years. The registrar shall preserve the lists for a period of four years following the close of the voting year in which the election occurred.

Subd. 2. Before the first day of January each year, the registrar shall examine the registration records to determine which registrations expire at the end of that voting year. Not earlier than November 15 and not later than January 15, he shall mail to each person whose registration is expiring, at the permanent address shown on the registration record and also at the temporary address if one is shown, a notice that it will be necessary for him to reregister if he wishes to vote at elections to be held on or after the following March 1, but that he may reregister for the succeeding three voting years by returning the notice to the registrar, with his signed statement thereon that he is still a qualified elector of the county, together with any change of address or other information necessary to bring his registration record up-to-date. The Secretary of State shall prescribe the form of the notices and request for reregistration referred to in this section.

Subd. 3. The notice referred to in Subdivision 2 of this section shall be marked with a direction to the postal authorities not to forward it to any other address and to return it to the registrar if the addressee is no longer at that address, with the reason for nondelivery and address correction information to be furnished to the registrar. The

registrar may make whatever arrangements with the postal authorities which he deems suitable for handling the payment for the address correction service. When a notice is returned undelivered, with information that the voter has moved to a new address, the registrar shall send the registrant another notice by nonforwardable mail to the new address, if it is within the county, informing him that he may reregister by returning the notice, as stated in Subdivision 2 of this section. If the new address is outside the county, the registrar shall send the registrant another notice by nonforwardable mail to the new address, informing him that his registration will be cancelled unless he furnishes the registrar with information showing that he is still entitled to registration in the county but that he may reregister by returning the notice if he is still entitled to registration in the county.

Subd. 4. If the registrar receives a request for reregistration on or before the 31st day preceding the beginning of the succeeding voting year, he shall renew the registration effective on March 1 for the succeeding three voting years. On requests received after that date, the reregistration becomes effective on the 31st day after receipt. The registrar shall make a notation of the reregistration on the voter's registration record sheet and shall attach the request to the voter's application.

Subd. 5. Immediately after the 31st day preceding the end of each voting year, the registrar shall place into a suspense file the applications and registration record sheets of the voters whose registration expires at the end of that year and who have not returned a request for reregistration. Where a request is received after that date, the registrar shall return the application and record sheet to the active file. During the month of January in the following year, the registrar shall close out the suspense file. He shall cancel the registration of each person whose records are in the file and shall send him a notice of the cancellation.

Subd. 6. Except where reinstatement of a cancelled registration is expressly provided for, a voter whose registration is cancelled must reregister in the same manner as an initial registrant.

[Acts 1969, 61st Leg., p. 2662, ch. 878, § 39, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2518, ch. 827, § 11, eff. Aug. 30, 1971.]

A former article 5.18b, relating to absentee registration by persons in military service and other categories stationed outside the state, was derived from Acts 1967, 60th Leg., p. 939, ch. 414, § 6 and repealed by Acts 1969, 61st Leg., p. 2662, ch. 878, § 39.

#### Art. 5.18c. Cancellation of Registration upon Death or Judicial Determination of Disqualification

Subd. 1. Not later than the 10th day of each month, each local registrar of deaths in this State shall furnish to the registrar of voters of the county of residence of the decedent an abstract of the death certificate of each decedent over the minimum voting age who was a resident of this State at the time of his death. The abstract shall show the name, age,

sex, place of residence, and date and place of death of the decedent. Upon receipt of an abstract, the registrar of voters shall determine if the decedent was a registered voter and, if so, shall cancel his registration.

Subd. 2. Not later than the 10th day of each month, the clerk of each county court or probate court in this State shall furnish to the registrar of voters of the county of residence of the person so adjudged, an abstract of each final judgment adjudging a person over the minimum voting age and resident within this State to be mentally incompetent or to be mentally competent. The abstract shall show the person's name and permanent address and any other available information which will assist in identifying the person in the voter registration files. Upon receipt of an abstract of an adjudgment of mental incompetence, the registrar shall determine if the person is a registered voter and, if so, shall cancel his registration. Upon receipt of an abstract of an adjudgment of mental competence, the registrar shall examine the extant cancelled registration files to ascertain whether the person was previously registered and whether his registration would still be current except for the cancellation upon his being adjudged incompetent, and if so, the registrar shall reinstate the registration.

Subd. 3. Not later than the 10th day of each month, the clerk of each court having jurisdiction of the trial of felony crimes shall furnish to the registrar an abstract of each unappealed conviction for a felony crime and of each final conviction in appealed cases. The registrar shall determine if the person convicted is a registered voter and, if so, shall cancel his registration.

Subd. 4. The reports required under Subdivisions 1, 2, and 3 of this section apply to deaths occurring, judgments of mental competency or incompetency entered, and felony convictions returned on and after October 1, 1972. The Secretary of State shall prescribe the forms for the abstracts required by Subdivisions 1, 2, and 3 of this section. The registrar of voters shall keep a supply of the forms on hand and upon request shall furnish blank forms to the officers in his county who are required to use them.

Subd. 5. Upon receipt of a certified copy of a final judgment in an election contest proceeding adjudging a registrant not to be a qualified voter, the registrar shall cancel his registration.

Subd. 6. Whenever a registration is cancelled under Subdivision 2, 3, or 5 of this section, the registrar shall immediately mail a notice of the cancellation to the registrant at the permanent address shown on his registration record and also at the temporary address if one is shown. If subsequent to the cancellation of a registration under any provision of this section it is ascertained that the registration should not have been cancelled, the registrar shall reinstate it.

[Acts 1971, 62nd Leg., p. 2518, ch. 827, § 11, eff. Aug. 30, 1971.]

**Art. 5.18d. Change of Name**

Subd. 1. A registered voter who changes his name through marriage or judgment of a court shall present his registration certificate to the registrar, with a signed request that his name be changed on the registration records. The registrar shall issue a new certificate to the voter under his new name and shall transfer the duplicate of the old certificate to the inactive file. He shall change the registration record sheet to show the new name and certificate number and shall file it under the new name. He shall attach the request to the voter's application and enter the number of the new certificate on the application, and shall file both documents under the new name. He shall make a notation of the former name on the duplicate certificate and shall delete it from the list of registered voters when he adds the new name.

Subd. 2. If otherwise qualified, a voter whose name is changed is eligible to vote under the new registration at any election held more than four days after the registrar makes the change on the registration records. He may vote under the former registration at any election held within four days after the new registration, upon making an affidavit that his certificate of registration under the former name has been surrendered to the registrar. The voter shall sign the form for the affidavit of a lost certificate, and the election officer shall add a notation in explanation of the circumstances.  
[Acts 1971, 62nd Leg., p. 2518, ch. 827, § 11, eff. Aug. 30, 1971.]

**Art. 5.19. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967****Art. 5.19a. List of Registered Voters**

(1) Before the first day of March each year, the registrar shall prepare for each election precinct of the county a certified list of registered voters who, as of the 31st day before March 1 (as of January 31, 1972, for the list prepared in 1972), are entitled to registration for the voting year in which March 1 falls. Each precinct list shall be prepared in two parts, each arranged alphabetically by the names of the voters and showing each voter's name, age, address, and registration number, and optionally his telephone number. On the first part of the original list shall be shown the names of voters who are qualified to vote in all elections as of March 1. On the second part shall be shown the names of voters who are not yet qualified to vote in all elections as of March 1. This list shall contain four columns, headed as follows:

Not eligible to vote before date shown			
U.S. Representative	State	County	City
_____	_____	_____	_____

For the various types of elections in which the voter is not yet eligible to vote, the registrar shall show the date on which he will become eligible. The registrar shall deliver to each board, executive committee, or other authority having the duty of fur-

nishing supplies for any general, special, or primary election to be held within the county during the voting year for which the list is prepared, one set of such lists for all precincts in the county if any election which may be held by such authority is countywide, and one set of such lists for all precincts wholly or partially within the boundaries of the particular political subdivision if all elections which may be held by such authority are less than countywide. The registrar shall also furnish to each such authority, not less than 20 days before each election, an updated consolidated list of the voters in each precinct who will have been registered for 30 days on the day of the election and whose names do not appear on the original list. When a runoff election is held, before the first day of absentee voting in the runoff election the registrar shall prepare a consolidated list of the voters who will have been registered for 30 days on the day of the election and whose names do not appear on the original list or the supplemental list prepared for the first election. Between the fourth day before the election and election day in each election, he shall furnish a separate list of the voters who transfer their registration more than four days before the election and who are not included in a previous list. The supplemental lists shall be prepared in two parts, in the same form as the original lists. With each supplemental list the registrar shall also furnish a list of persons whose registration has been cancelled or transferred to another precinct since preparation of the last set of lists. The authority shall furnish to the presiding judge in each precinct the original and supplemental lists of voters in his precinct at the time it furnishes other election supplies. Prior to the opening of the polls, the presiding judge shall strike from the registration list the names of persons whose registration has been cancelled or transferred to another precinct.

(2) The registrar shall furnish without charge to each clerk having the duty of conducting absentee voting in any election the appropriate lists for use in the conduct of absentee voting for the election. He shall also furnish to the county clerk one set of the original lists and one set of the supplemental lists prepared for each county-wide election, which shall be public records available for public inspection at all times that his office is open.

(3) No charge shall be made for lists furnished for use in elections held at the expense of the county or any city or other political subdivision. For each set of original and supplemental lists which the registrar is required to furnish to the executive committee of a political party for use in its primary elections, the registrar shall be permitted to charge not more than Five Dollars (\$5), to be paid by the party or the chairman so ordering the lists, which charge shall be in full for both the original lists and the supplemental lists. The registrar shall also furnish to the county executive committee of each political party, for any year in which such party is holding precinct conventions, one set of the original

and supplemental lists for use in qualifying persons to participate in such conventions, for which the registrar shall be permitted to charge not more than Five Dollars (\$5).

(4) In addition to the copies of the lists of registered voters which the registrar is required to furnish under Subsections (1), (2), and (3) of this section, he shall furnish a copy to any person requesting it, for which he shall make a reasonable charge. In any county where the voter registration lists are recorded on magnetic tape, the registrar shall furnish a copy of the tape to any person requesting it, for which he shall make a reasonable charge. The registrar shall exact a uniform charge against all persons to whom he furnishes copies of the lists other than the copies which he is required to furnish under Subsections (1), (2), and (3) of this section, and he shall exact a uniform charge against all persons to whom he furnishes copies of the tape. The charge shall not be greater than an amount deemed sufficient to reasonably reimburse the registrar for his actual expense in furnishing the copy. Costs incurred in registering the voters or in making up the certified lists from which the copy is taken shall not be included in the charge. All money collected under this section shall be accounted for as official fees of office.

(5) Where the lists of registered voters for a county are prepared by a computer service company or other private business entity under a contract with the county, one of the terms of the contract shall be that the company will supply copies of the lists to the registrar in the number ordered, and also copies of the tape in the number ordered where the lists are made up on magnetic tape, within 15 days from the date on which the company receives the order or from the date on which the company completes the preparation of the lists, whichever is the later.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 4; Acts 1971, 62nd Leg., p. 2521, ch. 827, § 12, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., pp. 48, 49, ch. 25, § 1, eff. March 18, 1971.]

#### Art. 5.19b. Reimbursement of County by State

Subd. 1. Before April 1 of each year, the registrar shall submit to the Comptroller of Public Accounts a certified statement of the total number of registered voters shown on the precinct registration lists as of March 1 of that year, together with the total number of registration certificates which were issued during the 12-month period ending January 31 of the year in which the statement is submitted.

Subd. 2. Before June 1 of the year in which the statement is submitted, the Comptroller shall issue a warrant to each county in the aggregate of the following amounts:

(1) 40 cents multiplied by the total number of new certificates, and

(2) 20 cents multiplied by the difference between the total number of registered voters and the total number of new certificates issued, as

shown by the certified statement required by Subdivision 1 of this section. However, before issuing a warrant the Comptroller may require additional proof to substantiate the statement.

Subd. 3. The disbursements prescribed by this section shall be made from the general revenue fund as provided by legislative appropriations. All money received by a county under this section shall be deposited in the county treasury in a special fund to be used for defraying expenses of the registrar's office in the registration of voters. None of the money shall be deemed to be fees of office or be retained by the registrar as fees in counties where the registrar is compensated on a fee basis.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2522, ch. 827, § 13, eff. Aug. 30, 1971.]

**Art. 5.20. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

#### Art. 5.20a. Deputy Registrars

Subd. 1. The registrar may have such number of duly authorized and sworn deputies as he deems necessary to assist in the registration of voters. However, no deputy may be paid for his services except with the approval of the Commissioners Court. An unpaid deputy shall not be required to give a bond in connection with his services.

Subd. 2. It is the intent of the Legislature that the registrar shall establish a sufficient number of registration places throughout the county, and outside the county courthouse, for the convenience of persons desiring to register, to the end that registration may be maintained at a high level.

Subd. 3. Where the performance of the services is not contrary to some other provision of law, the head of any department of the State government, with the approval of the governing board where one exists, any county officer, and the head of any department of a city, town, or village, with the approval of the municipal governing board, may permit any of the officers and employees under his control to become deputy registrars of voters and to register persons on any premises and facilities under his control during the regular working hours of the deputized officer or employee.

Subd. 4. It is also the intent of the Legislature that the registrar, in order to promote and encourage voter registrations, shall enlist the support and cooperation of interested citizens and organizations, and shall deputize as registrars qualified citizens in such a way as to cover most effectively every section of the county. The persons so deputized shall be permitted to register voters anywhere within the county and to secure registrations at the places of residence of the persons to be registered, and the registrar shall not deny deputy registrars the right to register voters in accordance with this authorization.

Subd. 5. No voter registrar shall refuse to deputize any person to register voters because of race, creed, color, or national origin or ancestry. No bona

vide resident of the county of good moral character shall be excluded from serving as deputy by the registrar.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2522, ch. 827, § 14, eff. Aug. 30, 1971.]

**Art. 5.21. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.21a. Statement of Registrations**

On or before March 5 of each year, the registrar shall make a statement to the Secretary of State and to the county clerk of the number of registered voters in each precinct as shown by the list of registered voters on March 1. The statement shall become a record of the officer to whom the statement is made.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2; Acts 1971, 62nd Leg., p. 2523, ch. 827, § 15, eff. Aug. 30, 1971.]

**Art. 5.22. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.22a. Penalty for False Registration**

Any person who wilfully makes any false statement to procure his registration as a voter or the registration of any person for whom he acts, as agent, or gives any false information in connection with such registration, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary not less than one nor more than three years.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2.]

**Art. 5.22b. Penalty for Forged or Fictitious Application**

Any person who applies for registration of any person, or who signs an application purporting to be the application for registration of any person, either real or fictitious, other than the person making the application or affixing the signature, or someone for whom he may lawfully act as agent, or someone who is unable to sign and who requests him to sign for such other person, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary not less than one nor more than three years.

[Acts 1967, 60th Leg., p. 940, ch. 414, § 7, eff. June 12, 1967.]

**Art. 5.22c. Penalty for Misdemeanor Offenses**

Unless some other penalty is expressly stated, each offense which is declared to be a misdemeanor by any provision of this chapter is punishable by a fine of not more than \$1,000.

[Acts 1971, 62nd Leg., p. 2523, § 16, eff. Aug. 30, 1971.]

**Art. 5.23. Repealed by Acts 1971, 62nd Leg., p. 2526, ch. 827, § 21, eff. March 1, 1972**

**Art. 5.23a. Construction of Other Laws**

Whenever, under any provision of this code or of any other statute of this state heretofore enacted, a person is required to have paid a poll tax or secured an exemption certificate as a qualification for any

purpose, such statute shall be construed to require that the person be registered as a voter in accordance with the provisions of this code. All references to a poll tax receipt or an exemption certificate in both civil and criminal statutes, including those contained in the Penal Code, shall be construed to mean a voter registration certificate, unless the context clearly requires otherwise, and all references to the list of qualified voters shall be construed to mean the list of registered voters as provided for in Section 51a of this code.<sup>1</sup>

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 3; Acts 1967, 60th Leg., p. 940, ch. 414, § 8, eff. June 12, 1967.]

<sup>1</sup> Article 5.19a.

**Art. 5.24. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**CHAPTER SIX. OFFICIAL BALLOT**

Article

- 6.01. Official Ballot.
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- 6.03. Certain Political Parties Not Permitted on Ballot.
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**Art. 6.01. Official Ballot**

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except (a) as a candidate for two (2) or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the

United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast two hundred thousand (200,000) votes or more for its candidate for governor at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 57; Acts 1955, 54th Leg., p. 48, ch. 34, § 1; Acts 1959, 56th Leg., p. 285, ch. 161, § 1.]

**Art. 6.01a. Use of Nicknames and Titles**

Subject to the prohibitions of this section, the name of each candidate on any general, special, or primary election ballot shall be printed on the ballot in the form designated by the candidate. In lieu of his full legal name, the candidate may use in combination with his surname any of his given names or initials or contraction of such names by which he is commonly known, and as a part of his name he may use a bona fide nickname of one unhyphenated word of not more than ten letters, by which he is commonly known and has been so known for at least two years preceding the election. No nickname shall be placed on the ballot unless it meets the foregoing requirements, and in no event shall there be placed on the ballot any nickname indicating any political, economic, social, or religious view or affiliation. The suffix "Sr.," "Jr.," "2nd," or a word or abbreviation of similar import may be used as part of the candidate's name.

A married woman or widow may use in combination with her surname the given name or initials of her husband or deceased husband with the prefix "Mrs." In the event two or more candidates for the same office have the same or similar surnames, each such candidate may have printed after his name a descriptive statement, not to exceed four words, which will distinguish him from the other. The descriptive words must refer to his place of residence or to his present or former profession, occupation or position (which may be by title or other method), and no other kind of descriptive matter shall be used. Except as herein permitted, no title or other designation of status, office, position, or attainment shall be affixed to any candidate's name. [Acts 1963, 58th Leg., p. 1017, ch. 424, § 31.]

**Art. 6.02. Loyalty Affidavits**

(a) No person shall be permitted to have his name appear upon the official ballot as a candidate or nominee for any public office, as hereinafter stated, at any general, special, or primary election in this state, unless and until he shall have filed a loyalty affidavit as required by this section. The provisions of this section shall apply to candidates for all elective state, district, county, and precinct offices, including the offices of United States Senator and United States Representative, and to all elective offices of cities, school districts, conservation districts, and other political subdivisions of the state,

except candidates for President or Vice-President of the United States and presidential elector candidates.

(b) A candidate whose name is to appear on the ballot in any general primary (first primary) election shall file the affidavit with the chairman of the executive committee with whom the request to have his name placed on the ballot is filed, or if filed with more than one, with each chairman. The affidavit must be filed before the deadline for filing applications for that election. Before the name of a write-in candidate in a first primary election is ordered placed on the ballot for a second or runoff primary election or is certified to be placed on the ballot for a general or special election as the party nominee, he shall file the affidavit with the chairman of the state executive committee in the case of a district or state-wide office and with the chairman of the county executive committee in the case of a county or precinct office. A candidate nominated by a party convention or a party executive committee shall file the affidavit with the committee chairman who certifies his nomination, and the affidavit must be filed before his name is certified. An independent or nonpartisan candidate shall file the affidavit with the officer with whom his petition or application for a place on the ballot is filed, and the affidavit must be filed before the deadline for filing applications for a place on the ballot at that election.

(c) The affidavit shall be in the following form:

I \_\_\_\_\_, of the County of \_\_\_\_\_, State of Texas, being a candidate for the office of \_\_\_\_\_ do solemnly swear that I believe in and approve of our present representative form of government, and, if elected, I will support and defend our present representative form of government and will resist any effort or movement from any source which seeks to subvert or destroy the same or any part thereof, and I will support and defend the Constitution and laws of the United States and of the State of Texas.

\_\_\_\_\_  
(Signature of candidate)

Sworn to and subscribed before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.

\_\_\_\_\_  
(Signature of officer administering oath)

\_\_\_\_\_  
(Title of officer administering oath)

(d) The name of no candidate or nominee of any political party whose principles include any thought or purpose of setting aside representative form of government and substituting therefor any other form of government shall be permitted on the official ballot. It is specifically provided that no candidate or nominee of the Communist Party or the Fascist Party or the Nazi Party shall ever be allowed a place on the official ballot at any election in this state.

(e) The certification of a candidate as the nominee of a political party shall be sufficient evidence of the

filing of the affidavit with the proper party chairman to permit the officer to whom the certification is made to place the candidate's name on the general or special election ballot, and it shall not be necessary for the candidate to file an affidavit with any other officer in connection with his candidacy, nor shall it be necessary for the certificate to state that the affidavit has been filed.

(f) If any officer with whom the loyalty affidavit as prescribed herein is required to be filed, fails or refuses to require the affidavit before ordering or certifying the candidate's name for a place on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 58; Acts 1963, 58th Leg., p. 1017, ch. 424, § 32; Acts 1967, 60th Leg., p. 1880, ch. 723, § 22, eff. Aug. 28, 1967.]

#### **Art. 6.03. Certain Political Parties Not Permitted on Ballot**

Any political party whose members believe in or advocate the principles and teachings of Communism, or who propose or advocate the overthrow of the Constitutional Government of the United States by force, shall not be permitted to have the name of any such party printed or placed on the official ballot at any General Election hereafter to be held in this State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 59.]

#### **Art. 6.04. Death or Declination; Placing Name of Substitute Nominee on Ballot**

If a nominee dies or declines his nomination, and the vacancy so created shall have been filled, and such facts shall have been duly certified in accordance with the provisions of this Code, the officer to whom certification of the substitute nomination is made shall promptly notify the official board created by this law to furnish election supplies that such vacancy has occurred and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification, or before opening of the polls where the voting is by use of a voting machine. In place of the pasters the official board may have the ballots reprinted, blotting out the name and printing above it the name of the new nominee, thus:

A. T. Jones

~~John Doe.~~

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 60; Acts 1963, 58th Leg., p. 1017, ch. 424, § 33.]

2 West's Tex. Stats. & Codes—15

#### **Art. 6.05. Form of the Ballot**

Subd. 1. All official paper ballots for any general, special, or primary election shall be printed on white paper of uniform style and of sufficient thickness to prevent the marks thereon to be seen through the paper. A suitable number of sample ballots may be printed on yellow paper for any election, but no ballot on yellow paper may be cast or counted.

Subd. 2. Upon each official ballot in every general, special, or primary election there shall be in the top right-hand corner a detachable stub formed by a perforated line which shall start two inches below the top right-hand corner of the ballot and shall extend two inches to the left and thence to the top edge of the ballot. Upon the stub thus formed there shall be no printing or writing except the number of such ballot and the date and designation of the election, and the words, "NOTE: VOTER'S SIGNATURE TO BE AFFIXED ON THE REVERSE SIDE." All ballots prepared for an election shall be numbered consecutively beginning with No. 1 in each county if the election is to be held in a single county or part thereof, or is to be held in more than one county or part thereof and the result in each county is to be canvassed separately prior to the final canvass. In elections held by a city or other political subdivision of the State, all ballots for the election shall be numbered consecutively beginning with No. 1. The number that appears on the stub shall also appear in the top left-hand corner of the ballot. The numbers shall be printed or stamped in consecutive order on all the ballots prepared for any election, with a separate number for each ballot, at the time of printing and before they are divided up and delivered to the election judges.

Subd. 3. In any general or special election at which the name of any candidate is to be printed on the ballot as the nominee of a political party, the tickets of the political parties which have nominated a candidate or candidates shall be arranged side by side in vertical columns of uniform width separated by a parallel rule. The first vertical column on the left-hand side of the ballot shall be used for printing the titles of the offices to be voted on, with the words "Candidates for:" being printed at the top of the column, and thereunder shall be listed the titles of the offices. In the top space in the second and succeeding vertical columns shall be printed the names of the political parties having nominees on the ballot, in the sequence specified by law. Listed under each party name and opposite each office title shall be printed the name of the party's candidate for the office. If the name of any independent or nonpartisan candidate is to be printed on the ballot, the next succeeding column shall be headed "Independent" and shall contain the names of the independent candidates opposite the appropriate office titles. The last column shall be headed "Write-In." The office titles shall be separated from each other by parallel horizontal lines extending across the ballot, through the party columns, the column for inde-

pendent candidates, and the column for write-in candidates.

Subd. 4. When presidential electors are to be voted upon, their names shall not appear on the official ballot, but the names of the candidates for president and vice-president, respectively, of the political parties shall appear at the head of their respective tickets, printed as one race, and the votes for presidential electors of the various parties shall be canvassed, counted, and returns made in accordance with Section 171 and Section 172 of this Code.<sup>1</sup>

Subd. 5. In any general or special election for which no party nomination has been made, the titles of the offices to be voted on shall be arranged in a vertical column, and beneath the title of each office the names of the candidates shall be arranged in the order specified by law. In any election for which write-in votes are permitted, beneath the names of the candidates under each office there shall be a blank space with either a broken or a solid line underneath, as the space for a write-in vote, and when more than one candidate is to be elected for an office, the number of write-in spaces shall correspond to the number of candidates to be elected. If the over-all size of the ballot, arranged as one column, exceeds 18 inches in length, the office titles may be arranged in parallel vertical columns, all except the last of which shall be at least 16 inches in length.

Subd. 6. On all official ballots for an election, the type for all office titles shall be of uniform style and size; the type for all column headings shall be of uniform style and size; and the type for the names of all candidates shall be of uniform style and size.

Subd. 7. On each official ballot where officers are to be elected or nominated, there shall be printed on the left-hand side of the name of each candidate a square, [ ], and there shall be printed immediately below the words "Official Ballot" the following instruction note: "Vote for the candidate of your choice in each race by placing an 'X' in the square beside the candidate's name." On each official ballot on which party columns appear, a larger square shall be printed on the left-hand side of the name of the party, at the head of each party ticket, and the following shall be added to the instruction note: "You may vote a straight ticket by placing an 'X' in the square beside the name of the party of your choice at the head of the party column." Appropriate changes in the instruction note shall be made where only one race is listed on the ballot or where more than one person is to be elected in any given race.

Subd. 8. When constitutional amendments or other propositions are to be voted on, they shall appear once on each ballot in uniform style and type. Each proposition shall be submitted by printing the word "FOR" and beneath it the word "AGAINST" on the left-hand side of a single statement of the proposition, with a brace or parallel horizontal lines

or other suitable device to show clearly to which proposition each "FOR" and "AGAINST" belongs. A square shall be printed on the left-hand side of the word "FOR" and of the word "AGAINST" in the statements submitting each proposition, and the following instruction note shall be printed immediately above the propositions: "Place an 'X' in the square beside the statement indicating the way you wish to vote." The provisions of this subdivision shall supersede all existing statutes on the form in which propositions are to be submitted in all elections where paper ballots are used except local option elections held under the provisions of the Texas Liquor Control Act, and shall also supersede any conflicting enactment passed by the 60th Legislature at its regular session unless such enactment expressly excepts it from the operation of this subdivision. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 61; Acts 1957, 55th Leg., p. 802, ch. 338, § 1; Acts 1967, 60th Leg., p. 1026, ch. 452, § 1, eff. Aug. 28, 1967.]

<sup>1</sup> Articles 11.02 and 11.03.

#### Art. 6.05a. Ballots for Elections Involving Precinct Offices

For any election, general or primary, at which the district office of United States Representative, State Senator, or State Representative, or the precinct office of county commissioner, justice of the peace, constable, public weigher, or precinct chairman of a political party is to be voted on, different ballots shall be prepared for the various districts or precincts involved in the election, to differ with respect to the district or precinct offices to be voted on. The election officers for each election precinct shall be furnished official ballots listing the district and precinct offices and candidates which are to be voted on by the voters in the particular election precinct, and no other district or precinct office shall be listed thereon, so that no voter shall receive a ballot listing any district or precinct office on which he is not entitled to vote. In furnishing ballots to absentee voters, the County Clerk shall furnish the voter with the ballot prepared for use in the election precinct in which he resides.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 34; Acts 1965, 59th Leg., p. 1552, ch. 678, § 11, eff. June 18, 1965.]

#### Art. 6.05b. Order of Party Columns on the Ballot

In any election held at the expense of the county, in which party columns appear on the official ballot, the columns shall be arranged in the following order, beginning on the left-hand side of the ballot:

(1) columns of parties with state organization which have nominated candidates to be voted on at the election, arranged in the order of the number of votes cast for each party's candidate for Governor at the preceding general election, with the party whose candidate for Governor received the highest vote being placed in the first column;

(2) columns of parties without state organization which have nominated candidates to be voted on at the election;

- (3) a column for independent candidates;
- (4) a column for write-in candidates.

If there is no independent or nonpartisan candidate whose name is to be printed on the ballot, the column for independent candidates shall be omitted.

Where voting machines are used in the election and the columns on the ballot are arranged horizontally, the columns shall appear on the ballot in the order herein provided, beginning at the top of the ballot instead of on the left-hand side.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 35.]

#### Art. 6.05c. Order of Offices and Names of Candidates

##### Order of State, District, County, and Precinct Offices

Subd. 1. (a) Whenever there are to appear on the ballot for any general, special, or primary election, two or more office titles of offices which are regularly filled at the general election provided for in Section 9 of this code,<sup>1</sup> they shall be listed on the ballot in the following relative order:

##### Federal offices:

- President and Vice President
- United States Senator
- Congressman-at-Large
- United States Representative (district office)

##### State offices:

- (1) Statewide offices
  - Governor
  - Lieutenant Governor
  - Attorney General
  - Comptroller of Public Accounts
  - State Treasurer
  - Commissioner of General Land Office
  - Commissioner of Agriculture
  - Railroad Commissioner
  - Chief Justice, Supreme Court
  - Associate Justice, Supreme Court
  - Presiding Judge, Court of Criminal Appeals
  - Judge, Court of Criminal Appeals

##### (2) District offices

- State Senator
- State Representative
- Member, State Board of Education
- Chief Justice, Court of Civil Appeals
- Associate Justice, Court of Civil Appeals
- District Judge
- Criminal District Judge
- Judge, Domestic Relations Court
- Judge, Juvenile Court
- District Attorney
- Criminal District Attorney

##### (3) County offices

- County Judge
- Judge, County Court-at-Law
- Judge, County Criminal Court
- Judge, County Probate Court
- County Attorney
- District Clerk
- District and County Clerk
- County Clerk
- Sheriff
- Sheriff and Tax Assessor-Collector
- County Tax Assessor-Collector
- County Treasurer
- County School Superintendent
- County Surveyor
- Inspector of Hides and Animals

##### (4) Precinct offices

- County Commissioner
- Justice of the Peace
- Constable
- Public Weigher.

The headings "federal offices" and "state offices" and the subheadings under "state offices" shall not be printed on the ballot.

(b) Whenever any new office within either of the above categories is created, the Secretary of State shall issue a directive designating its relative position on the ballot.

(c) Whenever the titles of party offices are to appear on the ballot for a primary election, they shall be listed following the public offices, in the order of "County Chairman" and "Precinct Chairman".

(d) Whenever any provision of this code authorizes or permits certain offices to be grouped and placed on a separate ballot or in a special column or section on the main ballot, the relative order as prescribed in Paragraph (a) of this subdivision shall be observed in listing such offices on the separate ballot or in the special column on the main ballot.

##### Elections Held by Other Political Subdivisions

Subd. 2. In elections held by municipalities, the office titles shall be listed on the ballot in the relative positions in which the offices are listed in the order calling the election, unless otherwise provided by charter or ordinance. In elections held by other political subdivisions, the authority calling the election shall determine the order of the offices on the ballot.

##### Order of Names of Candidates

Subd. 3. (a) In any general or special election in which the names of more than one candidate for the same office are to be printed on the ballot in an independent or nonpartisan column or are to be printed on the ballot without party designation, the order in which the names of such candidates are to

be printed on the ballot shall be determined by a drawing, to be conducted by the county clerk in elections held at the expense of the county, by the city secretary in city elections, and by the officer with whom the applications for a place on the ballot are filed in elections held by other political subdivisions. The officer conducting the drawing shall post a notice in his office, at least three days prior to the date on which the drawing is to be held, of the time and place of the drawing, and shall also give personal notice to any candidate who makes written request for such notice and furnishes to the officer a self-addressed, stamped envelope; and each candidate involved in the drawing or a representative designated by him shall have a right to be present and observe the drawing.

(b) In primary elections, the order in which the names of the candidates appear on the ballot shall be determined in the manner provided in Section 195 of this code.<sup>2</sup>

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 36; Acts 1967, 60th Leg., p. 1882, ch. 723, § 24, eff. Aug. 28, 1967.]

<sup>1</sup> Article 2.01.

<sup>2</sup> Article 13.17.

#### Art. 6.05d. Election for Unexpired Term

Whenever, in any general election or in any primary election for making nominations for a general election, an election is to be held for an unexpired term in an office, the words "unexpired term" shall be printed after the office title on the official ballot. [Acts 1963, 58th Leg., p. 1017, ch. 424, § 37.]

#### Art. 6.05e. Correction of Errors on Ballot; Use of Pastors

If an error is made in printing the name of a candidate on the ballot, it may be corrected by use of a printed sticker or paster, which shall be printed on the same kind of paper and in the same style of type as used on the ballot. Any other error may be corrected in like manner if it can be done without disturbing the regularity of the ballot form. No sticker or paster shall be used on a ballot except as authorized in this section or in Section 60 of this Code, and if otherwise used the names pasted shall not be counted.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 38.]

#### Art. 6.06. How to Mark Ballot

In all elections, general, special, or primary, the voter shall place an "X" in the square beside the name of each candidate for whom he wishes to vote; provided, however, that if the voter places a plus sign (+) or a check mark (✓) or any other mark that clearly shows his intention, in such space, it shall be counted as a vote for that candidate, provided that no more names are thus marked than there are places to be filled. When party columns appear on the ballot, a voter desiring to vote a straight ticket may do so by placing an "X" or other clear mark in the square at the head of the column of the party for which he wishes to vote. If the name of the person for whom the voter wishes to vote is not

printed on the ballot, the voter shall write in the name of the candidate for whom he wishes to vote, in the write-in column under the appropriate office title in elections where party columns appear on the ballot, and in an appropriate space under the title of the office in other elections; provided, however, that a voter shall not be entitled to vote for any candidate whose name is not printed on the ballot in any runoff election for nominating candidates or electing officers, and a space for write-in votes shall not be provided on the ballot for such elections. A voter shall also not be entitled to vote for any candidate whose name is not printed on the ballot in any other type of election where the law expressly prohibits votes for write-in candidates. In all elections where questions or propositions are to be voted on except local option elections held under the provisions of the Texas Liquor Control Act, the voter shall place an "X" or other clear mark in the square beside the statement indicating the way he wishes to vote on each proposition. The failure of a voter to mark his ballot in strict conformity with these directions or failure to vote a full ballot shall not invalidate the ballot, and a ballot shall be counted on all races and propositions wherein the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot. It is specifically provided that the election officers shall not refuse to count a ballot because of the voter's having marked his ballot by scratching out the names of candidates for whom or the statement of propositions for which he does not wish to vote.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 62; Acts 1957, 55th Leg., p. 802, ch. 338, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 39; Acts 1967, 60th Leg., p. 1028, ch. 452, § 2, eff. Aug. 28, 1967.]

#### Art. 6.06a. Write-in Votes when Office Title is Not on Ballot

Whenever at any general election there is no candidate whose name is to be printed in the ballot for an office subject to being filled at that election and the officer making up the official ballot fails to list the title of the office thereon, no person shall be declared elected to the office by virtue of write-in votes cast by writing in the title of the office and the name of the candidate unless the total number of votes cast for all write-in candidates for that office exceeds fifty percent of the total number of voters participating in the election who are eligible to vote for the office.

[Acts 1967, 60th Leg., p. 1884, ch. 723, § 25, eff. Aug. 28, 1967.]

#### Art. 6.07. Constitutional Amendments and Other Questions

Subd. 1. When a proposed constitutional amendment or other question submitted by the Legislature is to be voted on, the form in which it is submitted if the Legislature has failed to prescribe the same, shall be prescribed by the Governor in his proclamation, describing the same in such terms as give a clear idea of the scope and character of the amend-

ment in question. When more than one (1) proposed constitutional amendment or other question is submitted by the Legislature at one (1) election, the Secretary of State shall give to each such proposition and question a separate number, and shall certify the same together with its separate number to the county clerk of each county in the State. The number given to each such proposition, question or proposed amendment shall be determined by lot. The Secretary of State shall hold such drawing at a time and place designated by him and such drawing shall be open to the public. The propositions and questions so submitted shall be printed and numbered on the official ballot in the serial order in which they are numbered by the Secretary of State.

Subd. 2. Such constitutional amendments shall be published, under the authority of the Secretary of State as required by the Constitution. The Secretary of State shall apportion the amendments to the contracting newspapers; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when four (4) publications shall have been made; shall furnish one (1) approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue warrant in the amount specified. Executed affidavits must be returned from the owner, editor or publisher of the newspaper, to the Secretary of State within thirty (30) days from the date of the last publication; unless this time limit is observed, the Secretary of State shall refrain from approving affidavits for payment. Provided, however, if the Secretary of State shall deem it more expeditious or economical he may apportion such amendments and make a written contract with any state-wide association of daily and weekly newspapers in Texas for the publication of such constitutional amendments in newspapers designated by him. Such association shall cause such amendments to be published in said newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such amendments in said newspapers; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when four (4) publications shall have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such amendments were published, the number of column inches submitted to each publication, the cost of publication in each newspaper, together with a clipping for such newspaper, and any other information desired by the Secretary of State pertaining to such task; shall return within thirty (30) days from the date of the last publication all affidavits executed by the owner, editor, or publisher of such newspapers, together with an affidavit executed in duplicate by the general manager of such association that the amendments have been published by said newspapers as required by the Constitution, to the Secretary of State, who shall, after satisfying himself as to the proper publication of such amend-

ments, furnish one (1) approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

Subd. 2a. The publication of each constitutional amendment shall be limited to the text of the joint resolution below the resolving clause.

Subd. 3. The form in which any proposition or question to be voted on by the people of any city, county or other subdivision of the State shall be submitted, unless prescribed by statute, city charter or ordinance, shall be prescribed by the local or municipal authorities submitting it.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 63; Acts 1955, 54th Leg., p. 907, ch. 357, § 1; Acts 1967, 60th Leg., p. 1029, ch. 452, § 3, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1617, ch. 498, § 1, eff. June 10, 1969.]

**Art. 6.08. Repealed by Acts 1967, 60th Leg., p. 1858, ch. 723, § 77, eff. Aug. 28, 1967**

#### **Art. 6.09. Ballots Furnished**

For each voting precinct, there shall be furnished at least as many official ballots plus ten per cent (10%) as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each endorsed on the package, and entered of record by the county clerk in the minutes of the Commissioners Court. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 64.]

#### **Art. 6.10. Voters Provide Form**

If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 65.]

### **CHAPTER SEVEN. ARRANGEMENT AND EXPENSES OF ELECTION**

#### Article

- 7.01. Voting Booths.
- 7.02. Booths and Guard Rails.
- 7.03. Open to View.
- 7.04. When Booth Not Required.
- 7.05. Ballot Boxes Marked.
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## Article

- 7.08. Supplies Needed.
- 7.09. Judge to Procure.
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- 7.16. Runoff Elections in Cities and Towns of over 200,000; Voting Machines; Ballot.
- 7.17. Inapplication to Elections in which Voting Machines Used.

**Art. 7.01. Voting Booths**

Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand (10,000) inhabitants or more. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 66.]

**Art. 7.02. Booths and Guard Rails**

There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and who at the last general election paid their poll tax or obtained certificates of exemption from its payment, provided, the judges of the election may provide as many more booths and places as they deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six (6) feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three (3) sides closed and the front side open, shall be twenty-two (22) inches wide on the inside, thirty-two (32) inches deep and six (6) feet four (4) inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 67.]

**Art. 7.03. Open to View**

All booths and voting places shall be properly lighted. Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling

place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among whom may be one challenger for each political party and no more. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 68.]

**Art. 7.04. When Booth Not Required**

When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six (6) feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him with black lead pencil, and so screened that no other person can see how he prepares his ballot. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 69.]

**Art. 7.05. Ballot Boxes Marked**

For each election precinct, there shall be provided four (4) ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No. \_\_\_\_\_" (giving name and number of precinct); "Ballot box No. 2 for election precinct No. \_\_\_\_\_"; "Ballot box No. 3 for election precinct No. \_\_\_\_\_"; "Ballot box No. 4 for election precinct No. \_\_\_\_\_." [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 70.]

**Art. 7.06. Ballot Boxes**

All ballot boxes shall be securely made of a material and construction and in a design approved by the secretary of state. All ballot boxes shall be provided with a lock and key and shall have an opening at the top just large enough to receive a ballot when voted. Whenever the ballots shall have been counted at any election, general, special or primary, the counted ballots shall be locked in one of the ballot boxes of suitable size and delivered to the proper official and the key or keys to the said lock shall be delivered to the proper official to be kept for at least thirty days unless sooner needed for recount or contest as provided by law. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 71; Acts 1963, 58th Leg., p. 1017, ch. 424, § 40; Acts 1969, 61st Leg., p. 2662, ch. 878, § 16, eff. Sept. 1, 1969.]

**Art. 7.07. County Election Board**

In general and special elections for election of officers who are regularly elected at the general election provided for in Section 9 of this code,<sup>1</sup> the county judge, county clerk, sheriff, and county chairman of each political party which is required to nominate candidates by primary election shall constitute a board, a majority of whom shall act to provide the supplies necessary to hold and conduct the election. In all other elections held by the county, the board shall be composed of the county judge, county clerk and sheriff. As used herein, the words "supplies" means all supplies and equipment needed for the election, including, without limitation, ballot boxes, voting booths, guard rails, voting machines, and other voting equipment. The supplies shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the presiding

judges, provided, however, that delivery of voting machines shall be made in accordance with the provisions of Section 79 of this code.<sup>2</sup> The board shall file with the commissioners court a written report of their action as to supplies furnished by the county, giving a detailed statement of the expenses incurred in procuring such supplies.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 72; Acts 1967, 60th Leg., p. 1885, ch. 723, § 27, eff. Aug. 28, 1967.]

<sup>1</sup> Article 2.01.

<sup>2</sup> Article 7.14.

#### Art. 7.08. Supplies Needed

The respective counties shall provide the additional supplies needed to comply with this Act in so far as general and special elections are concerned.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 73.]

#### Art. 7.09. Judge to Procure

If from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies. If the certified list of qualified voters is not in his possession at least three (3) days before the election, he shall send for and procure them.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 74.]

#### Art. 7.10. Collector's Fee for Poll Taxes

The tax collector shall be paid fifteen cents for each poll tax receipt or certificate of exemption issued by him, to be paid pro-rata by the state and county in proportion to the amount of the poll tax received by the state and the amount of the fee received by the county for collecting the poll tax, and the amount paid to the tax collector shall include compensation for all duties performed by him under the provisions of this Code. Provided, however, that where county tax collectors are compensated on a salary basis the money paid by the state and county for receipts and certificates issued by him shall be deposited in the officers salary fund of the county.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 75; Acts 1963, 58th Leg., p. 1017, ch. 424, § 22.]

#### Art. 7.11. Duty of Sheriff and Constable

It shall be the duty of the sheriff or any constable of the county when called upon by the proper authority to serve all process and deliver all election supplies provided for by this Code. No extra compensation shall be allowed the sheriff or constable for the performance of such duties.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 76.]

#### Art. 7.12. Expenses for Election Supplies

All expenses incurred in furnishing the supplies, ballots, and booths in any general or special election shall be paid for by the county, except costs in municipal and school elections. All accounts for supplies furnished and services rendered shall first be approved by the Commissioners Court before they are paid by the county.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 77.]

#### Art. 7.13. Municipal Elections

The expense of all city and town elections shall be paid by the municipality in which same are held. In all such elections, the mayor, the city secretary, and/or the governing body shall do and perform each act which in other elections are required to be done and performed respectively by the county judge, the county clerk and the Commissioners Court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 78.]

#### Art. 7.14. Providing for Voting Machines

Providing for Examination and Approval of Voting Machines by the Secretary of State

Sec. 1. Any person, firm or corporation owning or controlling any voting machine and desiring to have the same adopted for use in the State of Texas, may apply to the Secretary of State to have such machine examined. Before the examination the applicant shall pay to the Secretary of State the sum of Four Hundred and Fifty Dollars (\$450). The Secretary of State shall cause said machine to be examined as hereinafter provided and shall make and file and keep on file in the office of the Secretary of State a report of such examination, which shall show whether the kind of machine so examined can safely be used by the voters at an election or primary election, under the conditions hereinafter provided. If the report states that the machine can be so used, it shall be deemed approved, and machines of its kind may be adopted for use at elections and primary elections as herein provided. Before making and filing such report, the Secretary of State shall require such voting machine to be examined by three (3) examiners to be appointed by the Secretary of State for such purpose, one of whom shall be an expert in patent law, and the other two (2) mechanical experts, and shall require of them a written report on such machine, and which reports shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive the sum of One Hundred and Fifty Dollars (\$150) as his compensation and expenses in making an examination and report as to each voting machine examined by him. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any voting machine. When the machine has been approved, any improvement or change that does not impair its accuracy, efficiency or capacity, shall not make necessary a reexamination or reapproval thereof. Any form of voting machine not approved as herein set out, or which has not been examined by voting machine examiners and reported on pursuant to law and its use specifically authorized by law, cannot be used at any election or primary election in the State of Texas.

Setting Out Requirements of Voting Machines

Sec. 2. A voting machine approved by the Secretary of State must be so constructed as to provide facilities for voting for such candidates as may be legally placed on an official ballot at any election in

this state. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate<sup>1</sup> by any party but whose name is legally on the ballot as an independent candidate, and must permit voting in absolute secrecy. It also must be so constructed that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constructed as to prevent voting for more than one person for the same office and at the same time preventing his voting for the same person twice. It must be provided with a lock or locks, by the use of which immediately after the polls are closed or the operation of such machine for such election or primary election is completed, any movement of the voting or registering mechanism is absolutely prevented. The machine shall be equipped with one or more protective counters. The machine may be equipped with a device which prints a copy or copies of the numbers registered on the counters, as registered before the polls open and after the polls close.

#### Adoption by Commissioners Court

Sec. 3. The commissioners court of any county in the state may adopt for use in elections in at least three of the larger election precincts in voting strength in the county, any kind of voting machine approved by the Secretary of State, and may adopt such voting machine at any time for use in such additional election precincts in the county as it may deem advisable. The court at any time may rescind or modify its previous order or orders adopting voting machines, and may discontinue use of voting machines altogether, but use of voting machines shall be retained in at least three of the larger election precincts if retained for use in any part of the county.

Voting machines shall be used at the biennial general elections for state and county officers in all precincts in which they have been adopted by the commissioners court. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting in such precincts for the particular election shall be by use of voting machines or paper ballots, and may provide for use of either voting machines or paper ballots in any or all of the precincts for which voting machines have been adopted. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities or other political subdivisions, and by the county executive committee of the political party in primary elections.

#### Experimental Use of Voting Machines

Sec. 4. The Commissioners Court of any county in the State of Texas, where not otherwise herein provided, may secure, for experimental use, at an election or primary election, in one or more precincts

without a formal adoption thereof; and its use at such election or primary shall be as valid for all purposes as if it had been formally adopted.

#### Providing Voting Machines

Sec. 5. The commissioners court of a county which had adopted voting machines for that county or any portion thereof, shall as soon as practicable, and in no case later than six months after adoption thereof, provide for each election precinct designated one or more approved voting machines in completed working order, and shall thereafter preserve and keep them in repair.

#### Payment for Voting Machines

Sec. 6. The County Commissioners Court shall provide for the payment of voting machines to be used in such county in such manner as the Court may deem for the best interest of the county, and for the purpose of paying for voting machines, such Commissioners Court is hereby authorized to issue bonds, and certificates of indebtedness, warrants, or other obligations to be used for this purpose and no other, which shall be a charge against the county, such bonds, certificates of indebtedness, or other obligations, may be issued with or without interest payable at such time or times as the Commissioners Court may determine, but shall never be issued nor sold for less than par; provided, however, that such Commissioners Court shall issue such bonds, certificates of indebtedness, warrants, or other obligations, to be used for the purpose of payment of voting machines in the same manner and with the same authority as provided for the issuance of warrants, bonds, certificates of indebtedness, or other obligations, by the General Laws of this State. The necessary tax shall be set aside at the time of creating such obligation so as to meet the debt provisions of the Constitution; provided, however, that should the Commissioners Court of any county deem it for the best interest of such county, said Commissioners Court is hereby authorized to contract for the renting of voting machines by such county for use in elections for a term of not more than two (2) years in any one contract of rental. Upon the expiration of such terms of contract of rental such Commissioners Court may renew and/or extend same from time to time. Such contracts shall be made only after advertising for bids in the manner provided by the General Laws controlling the purchases made by such county for county purposes provided and except, however, the Commissioners Court of any county is hereby authorized to accept proposals of rental and/or sale of voting machines after advertising as provided by law wherein the rentals paid by such county for the use of such voting machines or a part thereof may be applied on the purchase price of such machines upon such Commissioners Court determining that it is to the best interest of such counties so to do. Such voting machines shall be the property of the county paying for same and/or renting same, subject to the terms of the rental contract, and when used in any election or primary election, the county

is not charged by law with the holding of, such machines shall be leased to the authorities charged with holding such election or primary election, and payment shall be received by the county at such lease price per machine for each election day such machines are used in an election as the Commissioners Court shall fix, but not to exceed ten per cent (10%) of the original cost of such voting machine, as may be required to hold each election or primary election. The term each election or primary election, as herein used, shall mean each election day such machines are used for voting purposes in such elections, and the Commissioners Court in fixing such lease price shall fix a lease price, and payment for same shall be received by the county, for each day such machines are actually used for voting in such election or primary election, and in the event a runoff election or primary runoff election is held, such lease price shall be paid to the county for each whether the same be the first election or primary election or the second and/or runoff election or second and/or runoff primary; and those charged with the holding of such election or primary election shall pay the lease price whether it be a school board, a municipality, a political party, or any other organization or authority.

#### Absentee Voting

Sec. 7. In any election in which voting machines are to be used in all or part of the election precincts, the authority charged with holding the election shall within its discretion determine by proper resolution or order whether or not voting machines shall be used for absentee voting by personal appearance at such election. If it be determined by such authority that voting machines shall be used for absentee voting by personal appearance, a voting machine or machines shall be placed in the office of the clerk who is to conduct the absentee voting for the election, as provided in Section 37 of this Code,<sup>2</sup> with the ballot of the election thereon as regulated by law, and those entitled under the law to vote absentee by personal appearance at the clerk's office shall cast their votes on such machine or machines as the case may be, under the laws applicable to absentee voting, and the clerk shall enter on a poll list the name of each such voter at the time he votes. The clerk shall seal the machine or machines at the close of each day's voting in the presence of authorized watchers, if any, and such seal shall be broken by the clerk in the presence of such authorized watchers, if any, the following morning when voting begins. When absentee voting by personal appearance is legally concluded at the election, the clerk shall lock and seal such machine or machines in the manner prescribed for election precincts, to be kept intact until the day of the election. Before seven o'clock p. m. on the day of the election, the machine or machines shall be opened and the vote canvassed, in the manner provided for regular polling places, by the clerk who conducted the absentee voting and two other officers as follows: if an election held by the county, by the county judge and the sheriff; if a

city election, by the mayor and one other member of the city governing body, to be designated by the governing body; if an election held by some other political subdivision, by the presiding officer and one other member of the governing body of the subdivision, to be designated by the governing body; and if a primary election, by the chairman and secretary of the executive committee of the political party holding the election; provided, however, that where the absentee ballots voted by mail are counted by a special canvassing board as hereinafter authorized, the special canvassing board shall canvass the absentee votes cast on voting machines. After the canvass has been made, the machine or machines shall be locked and sealed and shall remain locked against voting for the same period as required for other machines used in the election. The results of such canvass shall be returned by sealing and delivering, same to the proper authority as provided by law and such results shall be tabulated and canvassed in the same manner and together with the tabulation and canvassing of the returns for other election precincts. The results of such absentee votes shall not be announced or made public until after seven o'clock p. m. of the day of the election, when such results shall be announced and made public together with the general results of the election by proclamation of same as provided by law.

In all elections, absentee voting by mail shall be conducted by use of paper ballots, and the authority holding the election shall provide official paper ballots for the casting of absentee ballots by mail as prescribed and provided by the general laws applicable to absentee voting. Should the authority determine by such resolution as above provided that paper ballots are to be used for absentee voting by personal appearance, a sufficient supply of paper ballots shall be provided for absentee voting by personal appearance as well as by mail. The absentee voting by use of paper ballots shall be conducted as prescribed by the general laws applicable to absentee voting, except as otherwise provided herein. If the authority holding the election determines that absentee paper ballots shall be counted by a special canvassing board as hereinafter authorized, the ballots shall be counted and returns made in the manner prescribed. If the ballots are not to be counted by a special canvassing board, they shall be sent to the precinct polling places for counting. On the second day prior to the election, the clerk shall mail or deliver to the presiding judge in the precinct of the voter's residence each absentee ballot which has been lawfully returned to him, in the manner provided in Subdivision 8 of Section 37 of this Code.<sup>3</sup> In county-wide elections, the authority holding the election shall be responsible for delivering to the precinct polling places the absentee ballots voted by mail which are received by the clerk between the second day prior to the election and one o'clock p. m. on election day. On election day, the precinct election officers shall test and qualify the absentee ballots in the manner provided in Subdivision 6 of

Section 37 of this Code,<sup>4</sup> and the name of each elector whose absentee ballot is accepted shall be entered on the regular poll list with the words "absentee voter" set down opposite the voter's name.

In election precincts where paper ballots are used, the ballot stubs for the accepted ballots shall be placed in the regular stub box prepared for the precinct, and the ballot envelopes shall be placed in a box for absentee ballots. Between the hours of 2:00 p. m. and 3:00 p. m. on the day of the election, the ballot envelopes shall be opened and the ballots shall be counted and tallied in the same manner as other ballots cast at the election and shall then be placed in ballot box No. 3 for counted ballots.

In election precincts where voting machines are used, the stubs shall be placed in a stub box prepared for absentee ballots for that precinct, and the ballot envelopes shall be placed in a box for absentee ballots. Between the hours of 2:00 p. m. and 3:00 p. m. on the day of the election, the ballot envelopes shall be opened and, under the supervision of the presiding officer and in the presence of two clerks and of the watchers, if any, the ballots shall be registered on the voting machine the same as if the absent voter had been present and voted in person, and the voted paper ballots shall then be placed in a ballot box which shall be locked and returned to the officer having custody of the voted ballots for that election.

All rejected absentee ballots and the applications and accompanying papers on all absentee ballots shall be handled and returned in the manner provided by general law for absentee voting.

#### Special Canvassing Board

Sec. 7a. In all elections in which voting machines are used for voting at regular polling places, both county-wide and less than county-wide, the authority charged with holding the election may in its discretion determine by proper resolution to have absentee paper ballots counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this Code.<sup>5</sup> The special canvassing board shall count the absentee paper ballots and make return thereof in the same way as prescribed for county-wide elections in Sections 37 and 38 of this Code, and all laws applicable to absentee voting in county-wide elections, including the period for absentee voting by mail, shall apply. The board shall be appointed and compensated as provided in Subdivision 6 of Section 37. If absentee voting by personal appearance has been conducted by use of voting machines, the special canvassing board shall also canvass and record the votes cast on the voting machine or machines and make return thereof.

#### Absentee Voting by Paper Ballots for Precinct Offices

Sec. 7b. Whenever, at any election where precinct offices are to be voted on, the authority charged with holding the election determines to use voting machines for conducting absentee voting by

personal appearance in the clerk's office and the number of separate precinct offices makes it impossible to place the entire ballot on one voting machine, the authority charged with holding the election may in its discretion further determine by proper resolution or order to use paper ballots for absentee voting by personal appearance for any or all of the precinct offices to be voted on, and to use a voting machine or machines for all other offices to be voted on at the election. The paper ballot used for precinct offices shall conform to all requirements for official ballots as provided elsewhere in this Code, except that there shall be listed thereon only the precinct offices for which the authority holding the election has determined to use paper ballots. Each voter making his personal appearance in the clerk's office shall be furnished with a paper ballot containing the precinct offices for which he is entitled to vote, and he shall cast his vote for offices listed on the paper ballot in accordance with the procedure for casting absentee ballots voted by personal appearance as provided in Sections 37 and 38 of this Code.

Absentee voting by mail shall be conducted by use of an official paper ballot for all offices to be voted on at the election, in the manner provided in Sections 37 and 38 of this Code.

A special canvassing board, which shall be appointed and compensated as provided in Subdivision 6 of Section 37 of this Code, shall count and make return of the paper ballots cast for precinct offices, as well as the absentee ballots cast by mail, in the manner prescribed in Subdivision 6 of Section 37. The votes cast on the voting machine or machines shall be canvassed and recorded and return thereof made in the manner prescribed for absentee votes cast on voting machines in Section 7 of Section 79 of this Code.

The provisions of this Subsection are cumulative of all other provisions relating to absentee voting.

#### Form of Ballots on Voting Machines

Sec. 8. All ballots shall be printed in black ink on white clear material, of such size as will fit in the ballot frame, and in as plain, clear type as the space will reasonably permit. In all elections, general, special, or primary, a designating letter and number may be affixed to the name of each candidate. In general elections, the party name may be affixed to the name of each candidate, and the names of all candidates of one political party shall be so arranged that a voter may be able to cast his ballot for such candidates as he may desire or to cast one ballot for all the candidates of that political party. In primary elections, however, the ballot shall be so arranged and the lever so locked as to prevent the voting of straight tickets. Should there be so many candidates and/or propositions to be voted upon in any election as to exceed the capacity of one machine, more than one machine shall be provided for each polling place, but in all cases where more than one

machine is necessary to list the entire ballot, the names of all candidates for any particular office shall be placed on one machine. In lieu of using an additional machine for listing the ballot, uncontested races may be placed in a separate column headed "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one at which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races shall be voted on as a block, and the requirement of this section that the ballot in general elections be so arranged that the voter may be able to vote a straight ticket for all candidates of one political party shall not apply to candidates appearing in the uncontested column. However, in no election may the ballot be so arranged that a voter is able to vote as a block on propositions.

If the authorities charged with holding the election determine, in their discretion, that more than one voting machine is necessary to accommodate the number of voters voting in an election precinct, then as many voting machines shall be used for each precinct as such authorities deem necessary, and the same form of ballot containing the names of all candidates and/or propositions arranged in the same manner shall be provided for each machine.

#### Color of Ink for Ballots on Voting Machines in Large Counties

Sec. 8a. In counties having a population in excess of one million, five hundred thousand (1,500,000) inhabitants according to the last preceding federal census, the ballots may be printed in one or more colors of ink; however, the names of all the candidates for any one office shall be printed in the same color.

#### Sample Ballots

Sec. 9. The authorities charged with holding the election or primary election may provide for each precinct two (2) sample ballots and one model arranged in the form of a diagram showing such part of the face of the voting machine as shall be in use in that election or primary election. Such sample ballots and model shall be on display in each precinct voting place throughout the time the polls are open and attention shall be especially called to them before each voter uses machine.

#### Preparation of Voting Machines

Sec. 10. It shall be the duty of the appropriate officer of the authority holding the election (the county clerk in elections held at the expense of the county, the city secretary in city elections, the presiding officer of the governing body of the political subdivision in elections held by other political subdivisions, and the chairman of the county executive committee in primary elections) to cause the proper ballot labels to be placed on voting machines, to

cause the machines to be placed in proper order for voting, and to examine all voting machines in the presence of authorized watchers for any interested persons, before they are sent out to the polling places, to see that all the registering counters are set at zero (000), to lock, in the presence of authorized watchers, all voting machines so that the counting machinery cannot be operated and to seal each one with a numbered seal. A list of the numbered seals and the number on the protective counters, together with the number of the precinct to which each machine was sent, shall be kept as a record open to any citizen, in the records of the officer making the examination, for the length of time required by law for preservation of the returns of the election. Such inspection and sealing of voting machines shall begin within five days before the day of the election at which such machines are to be used, and shall continue until all such machines are sealed. When all machines are locked and sealed, the key to each machine shall be placed in an envelope and sealed, the signature of the inspecting officer and the signatures of two watchers of opposed interest, if there be such, placed across the seal, and on the envelope shall be written the number then on the protective counter and the number of the seal of the voting machine, such envelope to be delivered to the presiding judge of each precinct.

It shall be the duty of the sheriff in an election held at the expense of the county, the duty of the mayor in a city election, the duty of the presiding officer of the governing body of the political subdivision in an election held by any other political subdivision, and the duty of the county chairman in a primary election, to have a voting machine or machines delivered to each of the polling places where voting machines are to be used, at least one hour before the time set for the opening of the polls in such voting precinct. After the machine has been delivered, the same authority shall cause the machine to be set up in the proper manner and shall cause protection to be given so that the machine shall be free from molestation and injury. The same authority shall cause to be delivered with each machine an auxiliary light where necessary, properly prepared to be lighted in emergency, so arranged that the light will illuminate the face of the machine sufficiently that a voter may be able to read all the names on the machine, and suitable for officers in examining counters. The protective hood and screen of the machine shall be examined to see that they properly conceal all the actions of the voter while the voter is operating the machine. All poll lists and necessary supplies shall be delivered to the presiding judge at the same time the key or keys to the machine are delivered.

#### Certificate of Convenience to Transport Voting Machines not Required

Sec. 10a. No necessity shall exist for the issuance of a certificate of convenience as provided by Article 911b, Section 5a, Revised Civil Statutes, for

the transporting of voting machines within the county. Such transporting of said voting machines is exempted from Article 1690b(a) of the Penal Code of the State of Texas.

Instruction of Election Officers

Sec. 11. Not less than three (3) days before an election or primary election, the authority charged with holding the same, shall cause to be held a public school of instruction for those who will actually conduct the election or primary election at the polling places, such school to be open to any interested person and notice of such meeting being given to the public press at least forty-eight (48) hours before same is to be held.

Preliminaries of Opening the Polls

Sec. 12. The key or keys to the voting machine or machines shall be delivered to the presiding judge of each precinct at least thirty minutes before time for the opening of the polls, the seal of the envelope containing the same to be unbroken, and the seal shall be broken by the presiding judge only in the presence of at least two authorized watchers for opposing interest (if there be such), and shall only be broken after comparison shows that the number written on the envelope and the number shown on the protective counter are identical. If these numbers are found not to be the same, the seal shall not be broken until the officer who prepared the machine or his representative shall arrive and deliver the correct keys or until another and properly sealed machine is delivered. If the numbers written on the envelope and the numbers on the seal of the machine are not identical, then the envelope shall not be opened and the same procedure as above set out shall govern. But if the numbers written on the envelope and the respective numbers on the seal and on the protective counter are found to be the same, the presiding judge shall open the doors concealing the counters, and before the polls are declared open, the election officers and each authorized watcher for any person interested shall carefully examine each counter and see that it registers zero (000). All of those last enumerated then shall examine the ballots and satisfy themselves they are in their proper places on the machine. If the machine is equipped with a device which produces a printed record of the register shown on the counters, the presiding judge shall verify that the printed form is correctly made up and shall take the necessary steps to secure a printed record from each machine, and all the persons authorized to be in the polls shall satisfy themselves that the printed record is correct. The election officers shall cause to be conspicuously placed the sample ballots and model for the guidance of the voters. All the persons authorized to be in the polls shall satisfy themselves that the voting machine is properly placed, being at least three feet from any wall or partition or any other obstruction, and that the face of the machine is turned toward where the election officers and the public may obtain a clear and unobstructed view of the same at all

times, except when the curtain on the machine is closed for the casting of the ballot. The election officers and at least two watchers of opposing interest (if there be such) shall then sign a certificate setting out that the keys were delivered intact, that the numbers on the protective counter and the seal correspond with those on the envelope, that all the counters were set at zero (000) and that the ballot labels were in their proper places. If any counter shall be found not to register zero (000), the presiding judge shall write out a statement to that effect and keep the same prominently posted throughout the day showing the number that counter was found to register, and in filling out the statement of canvass he shall subtract such number from the number found to register on that counter when the polls close. The machine shall then be opened for voting.

Conduct of the Voting

Sec. 13. The presiding judge shall be in general charge of the poll and shall see that a clerk of the election properly checks off the name of each voter from the list of qualified voters and enters his name on the poll list before the voter casts his ballot, and stamps or writes "voted" with a rubber stamp or with pen and ink, together with the date of the particular election, on the voter's poll tax receipt or exemption certificate. It shall further be the duty of one of the clerks to see that the voting machine is not tampered with and to attend the machine at all times. He shall inspect the ballot labels after each voter leaves the machine to see that none has been tampered with and to see that the machine has not been injured. He shall see that the coverings of the counter compartments of the machine are never unlocked nor opened so the counters are exposed during voting except for good and sufficient reasons, a statement of which shall be made and signed by all election officers and watchers in the polling place and attached to the returns.

Instructions for Voters in the Polls

Sec. 14. In addition to the sample ballots and model hereinbefore mentioned, which shall be prominently displayed and the particular attention of each voter thereto called by the presiding officer, if any voter after entering the machine, but before the curtains thereof are closed, shall desire further instructions, an election officer shall give such instruction without asking, persuading, or otherwise trying to induce such voter to vote for or against any ticket, candidate, amendment, question, or proposition, and watchers may be present while such instruction is being given. Finishing instructions, the election officer and watchers shall retire, whereupon such voter shall close the curtain and vote as in the case of an unassisted voter.

Manner of Voting

Sec. 15. But one voter shall be admitted at a time, and no voter shall be permitted to keep the curtain of the machine closed longer than two (2) minutes. However, if because of some bodily infir-

mity a voter is physically unable to operate the machine or to see, he may be assisted by two (2) election officials, or by a person selected by the voter, who shall operate the machine so as to vote the ballot in accordance with the voter's wishes, and shall be permitted to keep the curtain of the machine closed no longer than five (5) minutes. The provisions of Section 95 of this Code shall govern the assistance rendered under this section in so far as they can be made applicable.

Voting for Person whose Name Does Not Appear on the Ballot

Sec. 16. Ballots voted for any person whose name does not appear on the ballot shall be designated "irregular" ballots, but such ballots shall be valid and shall be counted as though they had been voted on the voting machine. Should a voter desire to vote for some person for an office whose name does not appear on the ballot, such person shall write the name of the person for whom he desires to vote on the roll of paper provided and designated for such purpose and such ballot shall be counted and included in the canvass officially made from that precinct, but no irregular ballot shall be cast or counted for any person whose name shall appear on the voting machine.

Arrangement of Ballot and Write-in Vote in Certain Counties

Sec. 16a. (a) In any county of this State where voting machines are used and the number of offices to be filled in the election exceeds the number of spaces available on the voting machines when the names of the offices and names of candidates are arranged on the ballot horizontally, the election authorities may use the available spaces on the voting machine in any good and proper manner which will not be confusing to the voter and which will enable the election authorities to conduct the election in an orderly and efficient manner.

(b) In any county, as defined in paragraph (a) hereof, any voter desiring to cast a write-in vote for any person whose name does not appear on the ballot on the voting machine may request a write-in ballot from the presiding official of the election or his clerk. Such write-in ballot shall be substantially in the following form:

NO. _____	FOR: _____
Write-In	Name of Write-In
Ballot Stub	Candidate
_____ Election	For the office of:
Date: _____	_____
For: _____	Title of Office
Name of Office	

After filling in the write-in ballot, said voter shall affix his signature upon the reverse side of the write-in ballot stub and shall detach the stub and place it in a sealed stub box prepared in the manner provided in Article 97 of the Election Code. The voter shall then deposit his write-in ballot in a ballot box prepared as all other boxes for election. No write-in ballot shall be cast or counted for any person whose

name shall appear on the ballot on the voting machine.

Provided however, that the following affidavit shall be and appear on the reverse side of the left hand portion of such write-in ballot.

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, having been by me first duly sworn, upon his oath, did depose and say:

That I have not and will not cast a vote on the voting machine for the office of \_\_\_\_\_

for which I have cast a ballot herewith by way of a write-in.

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 195\_\_\_\_.

Presiding officer, Precinct \_\_\_\_\_, \_\_\_\_\_ County, Texas.

And provided further that all of the provisions of Chapter 492, Acts of the Fifty-second Legislature, 1951, relating to the casting of write-in ballots shall be in full force and effect, except as herein provided.

Unofficial Ballot; Repair and Substitution of Machines

Sec. 17. If the official ballots for any precinct where voting machines are to be used are not delivered at the time required, or if after delivery they are lost, destroyed or stolen, the authority charged with the duty of furnishing the ballots for the election or the presiding judge of that precinct shall cause other ballots to be prepared, printed or written, as nearly in the form of the official ballots as practicable, and shall cause the ballots so substituted to be used in the same manner, as near as may be, as the official ballots. Such ballots shall be known as unofficial ballots, and a certificate setting out the circumstances of the use shall be made out by the presiding judge and signed by such officer together with every person legally serving in such poll, such certificate to be attached to the canvass from the precinct. Should any voting machine become out of order while being used, it shall, if possible, be repaired or another machine substituted in its place as promptly as possible, and the Commissioners Court of any county in which voting machines have been adopted either in whole or in part, for use in elections, is authorized and empowered to appropriate funds for servicing, repairing or substituting any such voting machines, on a per diem or on such other basis as to said court may appear just and proper.

Making Out the Returns and Proclamation of the Result

Sec. 18. (a) Prior to the day of election, the authority charged with furnishing the supplies for the

election shall cause to be prepared the necessary blanks for the statement of canvass mentioned herein, which shall be delivered to the presiding judge with other supplies for the election. The statement of canvass shall be of a form to be approved by the Secretary of State and shall conform with the type of voting machine to be used, and the designating number and letter of each candidate or proposition shall be printed next to the candidate's name or the proposition on the statement of canvass.

(b) As soon as the polls are closed, the election officers shall immediately lock the machine against voting. They then shall sign a certificate stating that the machine was locked and sealed, giving the exact time, and giving the number of voters shown on the public counters, which shall be the total number of votes cast on such machine in that precinct, the number on the seal, and the number registered on the protective counter. (This also shall be the procedure at the close of absentee voting when the machines are used for absentee voting by personal appearance.) They then shall open the counting compartment in the presence of the watchers, giving full view of all the counter numbers. The presiding judge shall, under the scrutiny of the watchers, in the order of the offices as their titles are arranged on the machines read and announce in distinct tones the designating number and letter on each counter for each candidate's name, and the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also in the same manner announce the result of each proposition voted on. The vote as registered shall be entered on the statements of canvass in ink by two clerks and verified by the three election officers and by two watchers of opposing interest (if there be such), the entries to be made in the same order on the space which has the same designating number and letter, after which the figures shall again be verified by being called off in the same manner from the counters of the machines by watchers of opposed interest (if there be such). The returns of the canvass as required by law shall then be filled out and verified, and shall show the number of votes cast for each candidate and the number of votes cast for and against any proposition submitted, and shall be signed by the three election officers and at least two watchers of opposed interest (if such there be). The counter compartments of the voting machine shall remain open throughout the time of making of all statements and certificates and the official returns and until they have been fully verified, and during such time any candidate or his representative or any representative of any newspaper or press association shall be admitted. The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the presiding judge, who shall read the names of each candidate, with the designating number and letter of his counter, and the vote registered on such counter, and also the vote cast for or against any proposition submitted. During such proclamation ample oppor-

tunity shall be given to any person lawfully entitled to be in the polling place to compare the results announced with the counter dials of the machine, and any necessary corrections shall then and there be made, after which the doors of the voting machine shall be locked and sealed with the seal provided, so sealing the operating lever of the machine that operation of the voting and counting mechanism will be prevented.

(c) If the machine is provided with a device which produces a printed record of the numbers registered on the counters, the procedure outlined herein shall be followed in lieu of the procedure set out above for preparation of the statements of canvass. After preparation of the certificate giving the number of voters shown on the public counters and the other information as provided for in the preceding paragraph, the presiding judge, in the presence of at least two clerks and two watchers of opposed interest (if such there be) and of any other person lawfully present who wishes to observe, shall take the necessary steps to secure a printed record from each machine. The election officers shall then open the counter compartments and shall compare the printed record with the counters, verifying that the printed record correctly shows the designating number and letter on each counter and the result as shown by the counter numbers. Ample opportunity shall be given to all persons lawfully entitled to be present at the polling place to examine the printed record and compare it with the machine. The printed record shall then be signed by the presiding judge and two clerks and by two watchers of opposed interest (if such there be), certifying that the printed record was obtained from the machine designated thereon and that the printed record was compared with the machine and correctly records the results as shown on the counter dials, and the certified printed record shall constitute the official statement of canvass for that machine. The returns of the canvass shall then be filled out, verified, and signed as provided in the preceding paragraph.

(d) After the making out of the returns has been completed, the presiding judge shall deliver immediately, and in no event later than five hours after the closing of the polls, the statement of canvass and the returns to the proper authorities as provided by law. Irregular ballots, properly sealed and signed, shall be delivered to the officer designated by law as the custodian of voted paper ballots, and shall be preserved in the same manner and for the same length of time as provided by law for other ballots. The presiding judge shall deliver to the county clerk the keys of the voting machine enclosed in a sealed envelope, across the seal of which shall be written his own name together with that of at least two watchers of opposed interest (if such there be) or of two other election officers, and on the envelope shall be recorded the date of the election, the number of the precinct, the number of the seal with which the machine was sealed, the number of the public counter and the number of the protective counter.

## Canvass of the Returns; Recheck and Comparison

Sec. 19. The returns shall be canvassed in the same manner as returns from precincts where paper ballots are used; provided, however, that at the time of the making of the official canvass, where voting machines are used in an election, at the written request of any candidate whose name appears on the ballot or on the written petition of twenty-five voters of the county, city or other subdivision for which the election was held, the authority charged with the duty of canvassing the returns shall make, in the presence of a district judge and the county judge of the county in which the election was held, a recheck and comparison of the results shown on the official returns then in process of being canvassed, with the results appearing and registered on the counter dials of each voting machine used in the election for which a request for a recheck has been made. To enable the canvassing authority to make such recheck and comparison, it shall be authorized and empowered to break the seals on each such voting machine. At the conclusion of the recheck and comparison, the voting machine shall again be sealed up, the necessary corrections, if any, shall be made on the returns, and the result of the election shall be declared as shown by the recheck and comparison of the returns of election with counter dials of the voting machines. If voting machines were used which produced a printed record of the votes cast on such machine, candidates and voters shall have the right under the procedure heretofore detailed to have such printed record compared with the counters on the machine from which such printed record was obtained.

## Payment for Recheck and Comparison

Sec. 19a. A request for a recheck of voting machines used in an election shall be accompanied with a deposit of \$3 for each precinct to be rechecked. If the request is made by a person or persons other than a candidate at the election, it shall state what interest they represent. If the recheck results in a change in the outcome of the election favorable to the person or persons making the request, the amount of the deposit shall be refunded to the payor; otherwise, it shall be applied to the payment of any expenses incident to the recheck, and any amount remaining after payment of expenses shall be turned over to the county treasurer for deposit in the general fund of the county.

## Preservation of Ballots and Records of Voting Machines

Sec. 20. The voting machine shall remain locked against voting for a period of ten days from the day of the election, provided that where a second election occurs within such ten-day period, then the voting machine shall remain locked against voting until the returns of the election are officially canvassed or until the expiration of five days from the day of the election, whichever is the later to occur, and then shall have the seal broken only on the order of a district judge having jurisdiction in that county, such order to be entered on the minutes of the

district court of that county, and if in the opinion of such district judge, contest is likely to develop, shall remain locked for such time as the district judge may direct; provided, however, such time shall not be for a period of time that will interfere with or prohibit the use of such machines in a subsequent election. On the order of any court of competent jurisdiction, the seal may be broken for the purpose of proper investigation, and when such investigation is completed, the machine shall again be sealed and across the envelope containing the keys shall be written the signature of the person or persons having broken same.

## Custody of Voting Machines and the Keys Thereof

Sec. 21. The County Commissioners of a county in which voting machines are used shall have general custody and care and repair of such machines, but the County Clerk is charged with the care and custody of the keys and seals for the same. The same authority that caused the delivery of the voting machines shall be charged with the transportation of such machines back into the custody of the County Commissioners and shall furnish all necessary protection to see that such machines are not molested nor injured from the time such machines leave the place where they are regularly stored until they are turned into the custody of the officials of a precinct and from the time that custody ceases on the part of the precinct officials and the machines are returned to the place of regular storage.

Sec. 22. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).

## Application of Other Laws; Fraud and Perjury

Sec. 23. The provisions of all other laws relating to the conduct of elections or primary elections, shall so far as practicable, apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided; provided, however, it is declared to be the public policy of this State that the provisions herein, providing for the use of voting machines at elections, are regulations to detect and punish fraud, and to preserve the purity of the ballot box; and any voter who fraudulently or illegally casts a ballot, or who casts a fraudulent or illegal ballot upon a voting machine, at any election (after the casting of such fraudulent or illegal ballot, or such fraudulent or illegal casting of a ballot has been established by final adjudication before a court of competent jurisdiction and by competent evidence), shall be compelled and required to disclose the names of the candidate or candidates for whom he cast such ballot at such election, and the ballot cast by him upon any question or questions at such election in any proceedings instituted under the laws of this State in any court of competent jurisdiction, and whoever in such proceedings shall swear and/or testify falsely, shall be deemed guilty of the offense of perjury, and shall be subject to the penalties provided for such offense by the laws of this State.

Appointment and Compensation of Election Officers; Watchers

Sec. 24. The appointment and compensation of the presiding judges and clerks for precincts where voting machines are used shall be governed by the provisions of Sections 15 and 22 of this Code,<sup>5</sup> and their service and duties shall be governed by the general provisions of this Code, except as otherwise provided herein.

The general provisions of this Code, as supplemented herein, shall govern the qualifications, appointment, and service of watchers for precincts where voting machines are used.

Definitions

Sec. 25. The list of candidates and offices and/or propositions to be voted on, used or to be used on the front of the voting machine, shall be deemed official ballots for the purpose of precincts using voting machines.

The word "ballot" as used herein means that portion of the cardboard or other material within the ballot frames containing the names of the candidates and the offices, or the statements of propositions to be voted on, except when referring to irregular or unofficial ballots and except where such word is used in connection with the casting of a vote by a voter, in which event the word "ballot" is defined as the casting of a secret vote.

The terms "protective numbering counter" and "protective counter" mean a separate counter built into the machine which cannot be reset and which records the total number of movements of the operating lever.

The terms "public numbering counter"<sup>7</sup> and "public counter" mean a device in full view of the election officers except while the voter is voting, which records the number of the voter's vote and is cumulative of the number of voters casting votes on the machine at the election being held.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 79; Acts 1955, 54th Leg., p. 889, ch. 340, § 1; Acts 1957, 55th Leg., p. 338, ch. 153, § 2; Acts 1957, 55th Leg., p. 798, ch. 333, § 1; Acts 1959, 56th Leg., 3rd C.S., p. 432, ch. 21, § 1; Acts 1959, 56th Leg., p. 183, ch. 101, § 1; Acts 1961, 57th Leg., p. 88, ch. 51, § 3; Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 41 to 54, 121(a); Acts 1963, 58th Leg., p. 1371, ch. 523, § 1; Acts 1967, 60th Leg., p. 1886, ch. 723, §§ 28, 29, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, §§ 17, 18, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1845, ch. 542, § 111, eff. Sept. 1, 1971.]

<sup>1</sup> So in enrolled bill.

<sup>2</sup> Article 5.05.

<sup>3</sup> Article 5.05, subd. 8.

<sup>4</sup> Article 5.05, subd. 6.

<sup>5</sup> Article 5.05, subd. 6.

<sup>6</sup> Articles 3.01 and 3.08.

<sup>7</sup> So in enrolled bill.

Art. 7.15. Providing for Electronic Voting Systems

Purpose

Subd. 1. The purpose of this section is to authorize the use of electronic voting systems in which the

voter records his votes by marking or punching a ballot which is so designed that votes may be counted by data processing machines.

Definitions

Subd. 2. As used in this section, unless otherwise specified:

(a) "Electronic voting system" means a system of voting in which voted ballots are counted and tabulated by automatic tabulating equipment.

(b) "Automatic tabulating equipment" means any apparatus which automatically examines and counts voted ballots and tabulates the results.

(c) "Voting equipment" means any kind of equipment used in connection with an electronic voting system other than automatic tabulating equipment.

(d) "Ballot card" means a card which is placed upon or inserted in a voting device and which is marked or pierced by the voter in the process of voting.

(e) "Ballot labels" means card, papers, booklet, pages, or other material attached to a voting device containing the names of offices, candidates and parties and statements of measures to be voted on.

(f) "Ballot" may refer to paper ballots, ballot cards, ballot labels, or combinations of ballot cards and ballot labels depending on the context.

(g) "Central counting station" means one or more locations selected by the proper public official for the automatic counting and tabulating of ballots.

Examination and Approval of Electronic Voting Systems

Subd. 3. (a) Any person, firm, or corporation desiring to have an electronic voting system adopted for use in this state may apply to the Secretary of State to have such system examined. Before the examination the applicant shall pay to the Secretary of State the sum of \$450. The Secretary of State shall cause such system to be examined as hereinafter provided and shall make and file and keep on file in his office a report of such examination, which shall show whether the system so examined meets the requirements set forth in Subdivision 4 of this section. If the report states that the system meets those requirements, it shall be approved, and the system may be adopted for use at elections as provided in this section.

(b) Before making and filing his report, the Secretary of State shall require the system to be examined by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be expert in patent law, one of whom shall be expert in electronic data processing, and one of whom shall be expert in election law and procedure,

and shall require from them a written report on their examination, which shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive one hundred and fifty dollars as his compensation and expenses in making the examination and report. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any electronic voting system. When a system has been approved, any improvement or change that does not impair its accuracy, efficiency, or capacity shall not make necessary a reexamination or reapproval thereof. Any electronic voting system not approved as herein provided cannot be used at any election in this state.

#### Requirements for Electronic Voting Systems

Subd. 4. (a) Any electronic voting system approved by the Secretary of State must meet the following requirements:

(1) It must permit voting in absolute secrecy, except in the case of voters who have received assistance as provided in this code.

(2) It shall permit each voter:

(A) to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others;

(B) to vote, in a general election, for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballot as an independent candidate;

(C) to vote for a person whose name does not appear on the ballot, in any election and for any office where write-in votes are permitted by law;

(D) to have his vote counted for no more than one person for the same office, unless permitted by law, and at the same time prevent his vote from being counted more than once for the same person for the same office;

(E) to vote for or against any question upon which he is entitled to vote;

(F) to vote, by means of a single mark or punch, for all candidates of one party or to vote a split ticket as he desires.

(b) No electronic voting system shall be approved by the Secretary of State unless he finds that it is suitable for the purpose for which it is intended, and that it will operate efficiently and accurately and provide adequate safeguards against fraudulent manipulation under the conditions under which it is intended to be used.

(c) In his certification of approval of any electronic voting system, the Secretary of State shall certify whether in cases where a voter splits a straight party vote, the system is capable of counting the straight party vote only for the candidates of that party for offices as to which the voter has not voted for individual candidates and of counting the votes

cast for individual candidates. If the system is so certified, the voting of a split ticket in that manner shall be allowed in elections using that system.

#### Adoption by Commissioners Court

Subd. 5. (a) The commissioners court of any county in the state may adopt one or more kinds of approved electronic voting systems for use in elections in part or all of the election precincts in the county. If a particular system is not adopted for use throughout the county, the commissioners court shall designate the precincts, which shall be not less than three in number, in which such system is to be used, and any other authorized method of voting may be used in the remaining precincts. The court may provide that in any precinct designated for use of a particular electronic voting system the voting in that precinct may be supplemented by use of some other authorized method of voting when in any election it appears that the number of available units of the system designated for use in that precinct is inadequate for that election; and the officer or board charged with the duty of furnishing supplies of the election may make such supplementation under those conditions.

(b) The commissioners court at any time may rescind or modify its previous order or orders adopting any electronic voting system and may discontinue use of the system altogether, but use of the system shall be retained in at least three of the voting precincts if retained for use in any part of the county.

(c) The electronic voting system adopted by the commissioners court shall be used at the biennial general elections for state and county officers in all precincts designated by the court for use of such system. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting in such precincts for the particular election shall be by use of such system or by some other authorized method of voting in any or all of the precincts for which the system has been adopted. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities and other political subdivisions, and by the county executive committee of the party holding the election in primary elections of political parties.

(d) Whenever a municipality or other political subdivision is situated in more than one county, any election held by such political subdivision may be conducted by use of any authorized method of voting which has been adopted by the commissioners court of either such county for use in precincts lying within such political subdivision, regardless of whether that method had been adopted in the other county or counties in which the political subdivision is situated. The governing body of the municipality or other political subdivision shall make the determination as to the method to be used.

## Experimental Use of Electronic Voting Systems

Subd. 6. The commissioners court of any county in the state may secure, for experimental use at elections in one or more precincts, without formal adoption thereof, any kind of electronic voting system approved by the Secretary of State, and its use at any election in such precinct within the period specified by the commissioners court for experimental use of such electronic voting system shall be as valid for all purposes as if it has been formally adopted; provided, however, that the period for experimental use shall not exceed two years from the date of the order authorizing its use.

## Providing Voting Equipment

Subd. 7. The commissioners court of a county which has adopted an electronic voting system for that county or any portion thereof, shall as soon as practicable and in no case later than six months after adoption thereof, provide for each election precinct designated the voting equipment which the court deems necessary for accommodation of voters in the general election for state and county officers, and shall thereafter preserve and keep such equipment in repair. The commissioners court may also, if it deems such action in the best interests of the county, provide for the county a suitable number of pieces of automatic tabulating equipment for use in the central counting stations in the county.

## Payment for Voting Equipment and Automatic Tabulating Equipment

Subd. 8. (a) The commissioners court shall provide for the payment for voting equipment and automatic tabulating equipment to be used in such county in such manner as the court may deem for the best interests of the county, and for the purpose of paying for such voting equipment or automatic tabulating equipment, or both, the commissioners court is hereby authorized to issue bonds, certificates of indebtedness, warrants, or other obligations to be used for this purpose and no other, which shall be a charge against the general revenue fund of the county. Such bonds, certificates of indebtedness, warrants, or other obligations may be issued with or without interest payable at such time or times as the commissioners court may determine, but shall never be issued or sold for less than par. The commissioners court shall issue such bonds, certificates of indebtedness, warrants, or other obligations in the same manner and with the same authority as provided for the issuance of bonds, certificates of indebtedness, warrants, or other obligations by the general laws of this state. The necessary tax shall be set aside at the time of creating such obligation so as to meet the debt provisions of the Constitution.

(b) If the commissioners court of any county deems it for the best interests of such county, the court is hereby authorized to contract for the renting of an electronic voting system or any portion thereof by such county for use in elections for a term of not more than five years in any one contract

of rental. Upon expiration of such terms of contract of rental, the commissioners court may renew or extend the contract from time to time. The commissioners court of any county is also authorized to accept proposals of rental and/or sale of electronic voting systems or any part thereof wherein the rentals paid by such county for the use of such an electronic voting system or a part of the rentals may be applied on the purchase price of such system if the commissioners court determines that it is to the best interest of the county to do so.

(c) The voting equipment and automatic tabulating equipment shall be the property of the county paying for or renting it, subject to the terms of the rental contract. When used in any election not held at the expense of the county, the voting equipment and county-owned tabulating equipment so used shall be leased to the authority holding the election, and payment shall be received by the county at such lease price as the commissioners court shall fix for each piece of voting equipment or tabulating equipment used, but not to exceed ten percent of the original cost of the unit for each election day such equipment is used; and the authority charged with the expense of holding the election shall pay the lease price, whether it be a municipality or other political subdivision, a political party, or any other organization or authority.

(d) Notwithstanding any other provision of this subdivision, the commissioners court may enter into agreements with the owners or lessees of automatic tabulating equipment located at central counting stations designated by the court pursuant to this section, under which the authority holding the election will pay to such owner or lessee a stipulated charge for use of the equipment under such terms as may be agreed upon. Any such agreement shall be for a term of not more than two years, but it may be renewed or extended from time to time.

## Absentee Voting

Subd. 9. (a) In any election in which an electronic voting system is to be used in all or part of the voting precincts, the authority charged with holding the election shall within its discretion determine by proper resolution or order whether or not an electronic voting system shall be used for absentee voting by personal appearance at such election. If the electronic voting system is to be used for such absentee voting and more than one kind of system has been adopted by the commissioners court, the authority shall specify what kind is to be used.

(b) If the authority holding the election determines that an electronic voting system shall be used for absentee voting by personal appearance, the necessary ballots and voting equipment shall be provided in the clerk's office. The procedure for absentee voting by personal appearance where paper ballots are used shall be followed insofar as it can be made applicable. The clerk shall enter on a poll list the name of each such voter at the time he votes. If an electronic voting system is used for voting by

personal appearance and the absentee ballots voted by mail are counted manually, such ballots shall be counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this code.<sup>1</sup> The board shall also prepare the voted electronic voting system ballots for delivery to the central counting station in the manner provided in Subdivision 19 of this section, and such ballots shall be delivered to the central counting station and there tabulated, as provided in Subdivisions 19 and 20 of this section. The presiding judge shall add the results of any manually counted ballots and the results of any write-in votes to the tabulation made on the automatic tabulating equipment, and shall make returns showing the totals thus obtained.

(c) When absentee ballots voted by personal appearance are to be marked with an ordinary pen or pencil in the manner that ordinary paper ballots are marked, and the absentee ballots are to be counted manually, the ballots shall be handled in the manner provided in Section 37 of this code for the handling of absentee paper ballots, and shall be counted and tallied by a central canvassing board or by the precinct election officers, as the case may be, in the same way that paper ballots are tallied. Absentee ballots sent to precinct polling places for counting shall be added to the results for ballots cast at the polling place.

(d) When absentee voting is conducted by paper ballots, the ballots prepared for use in the electronic voting system may be used, if practicable, in the absentee voting both by personal appearance and by mail; otherwise, the ballots shall be prepared as ordinary paper ballots provided for in this code.

(e) The authority holding the election may authorize true copies of paper absentee ballots voted by personal appearance or by mail to be made on electronic voting system ballots in the presence of watchers and the ballots counted and tabulated in the manner provided in Subdivisions 19 and 20 of this section. Both the original ballot and the duplicate shall be preserved. Each duplicate ballot shall be clearly labeled by the word "Duplicate" and shall bear a serial number, which shall also be recorded on the original ballot.

#### Instruction of Election Officers

Subd. 10. Not less than three days before an election, the authority holding the election shall cause to be held a public school of instruction on the use of the electronic voting system for those who will conduct the election at the polling places and those who will be at the central counting stations, such school to be open to any interested person. Notice of the meeting shall be given to the public press at least 48 hours before it is to be held.

#### Watchers at Central Counting Station

Subd. 10a. Watchers may be appointed to observe activities at the central counting station in the same manner as watchers are appointed to serve at

regular polling places. The watchers need not be present at the time the central counting station opens, and they may begin service at any time they desire. If the counting of ballots is begun before the official time for closing the polls, any watcher who is on duty after the counting is begun shall remain on duty until the time for closing the polls except for such periods of absence as permitted by the presiding judge of the central counting station. With this exception, a watcher may leave the central counting station and may resume his service at any time until the election officers have completed their duties. A watcher appointed for a regular polling place may also be appointed to serve at the central counting station after the official time for closing the polls. This subdivision does not affect the right of watchers from the polling places to accompany the election officials to the central counting station, as provided in Subdivision 19 of this section.

#### Form of the Ballot

Subd. 11. (a) Except as otherwise provided herein, the ballot for electronic voting systems shall conform to the applicable provisions of this code governing voting by ordinary paper ballots to the extent that they are consistent with the use of electronic voting systems.

(b) This paragraph (b) shall govern the form of the ballot to be used with electronic voting systems in which the voter records his votes on a ballot on which the names of offices, candidates and parties and statements of measures to be voted on are set forth in a manner similar to ordinary paper ballots.

(1) Ballots may be of such size, composition, texture, and color (other than yellow, which shall be used for sample ballots only), and may be printed in any type of ink or combination of inks that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Printing on the ballots shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) The ballots may contain printed code marks or prepunched holes necessary for placing the ballots in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The ballot may be divided into parts and printed upon two or more pages. Where all candidates for the same office or all party columns cannot be placed on the same face of the same page, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other party columns appear on the following page or pages. If the ballot is printed on more than one page, different tints of paper

other than yellow, or some other suitable means may be used to facilitate the sorting of ballots. Each page shall bear the ballot number, and other appropriate provision may be made for identifying the related parts of the ballot. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight party ticket.

(4) Each ballot shall have attached at the top a detachable stub of such size and placement on the ballot as is appropriate for the tabulating equipment to be used for counting the ballots. The stub shall contain the printing specified in Section 61 of this code,<sup>2</sup> and shall contain no other printing or writing, except that it may contain the instructions for marking the ballot.

(c) This subparagraph (c) shall govern the form of the ballot to be used with electronic voting systems in which the names of offices, candidates and parties and statements of measures to be voted on are set forth on ballot labels attached to a voting device and the voter records his vote by marking or punching a ballot card which is placed upon or inserted in the voting device.

(1) Ballot cards may be of such size, composition, texture and color (other than yellow, which shall be used for sample ballots only) and may be printed in any type of ink or combinations of ink that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Ballot labels may be of such size, composition, texture and color (other than yellow) that will be suitable for use on the voting device on which they are placed. Printing on the ballot label shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) Ballot cards may contain printed code marks or prepunched holes to assure that the card is properly positioned in the voting device or to assure that the card is placed in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The names of candidates, offices, parties and statements of issues to be voted on may be printed on two or more ballot labels placed on the voting device. Where all candidates for the same office or all party columns cannot conveniently be placed on the same face of the same label, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other parties appear on the following page or pages. If the ballot is printed on more than one ballot label, different tints of paper, other than yellow, may be used for different pages of the ballot labels, and other suitable means may be

adopted to facilitate the use of the ballot labels with the ballot card. When party columns appear on the ballot there shall be printed at the head of the ballot the names of the parties and a space for voting a straight ticket.

(4) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu of party columns. The title of each office shall be printed on the party labels followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made on the first page of the ballot labels for voting a straight party ticket, and the candidate of the party which is printed in the first party column on paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on paper ballots shall be printed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races."

(5) Each ballot card shall have attached at the top a detachable stub of such size and placement on the card as is appropriate for the tabulating equipment to be used for counting the ballots. The stub shall contain the printing specified in Section 61 of this code,<sup>2</sup> and shall contain no other printing or writing, except that it may contain the instructions for marking the ballot.

(6) If the number of candidates and/or propositions to be voted upon in any election exceeds the capacity of one voting device, the ballot may be divided into parts and a different voting device used for each of the separate parts. A separate voting device shall be provided for each part at each polling place, but in all cases where more than one device is necessary to list the entire ballot, the names of all candidates for any particular office shall be placed on one device. Each ballot card shall bear the ballot number, and other appropriate provision may be made for identifying the related ballot cards. In lieu of using an additional voting device for listing the ballot, uncontested races may be listed separately under the heading "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one in which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races may be voted on as a bloc.

(7) If the authorities holding the election determine, in their discretion, that more than one voting device is necessary to accommodate the number of voters in an election precinct, as

many voting devices shall be used for each precinct as such authorities deem necessary, and the same form of ballot containing the names of all candidates and/or propositions arranged in the same manner shall be provided for each device.

(8) A separate write-in ballot, which may be in the form of an envelope in which the voter places his ballot or ballot card after voting, shall be provided to permit voters to vote for a person whose name does not appear on the ballot.

(d) This subparagraph (d) shall apply to the form of the ballot for all electronic voting systems.

(1) Where officers are to be elected or nominated, there shall be printed on each ballot the following instruction note: "Vote for the candidate of your choice in each race by placing a punch hole in the space provided adjacent to the name of that candidate." Where the ballot is to be marked with a marking device using ink or other substance, the word "mark" shall be substituted for "punch hole." Appropriate changes in the instruction note shall be made where only one race is listed on the ballot or where more than one person is to be elected in any given race. Where measures or propositions are to be voted on, the instruction note shall be: "Place a punch hole (mark) in the space provided beside the statement indicating the way you wish to vote." The ballots shall also contain instructions on how to vote a straight ticket, how to vote a split ticket, and how to vote for a candidate whose name is not on the ballot. The wording of the instructions shall be prescribed by the Secretary of State.

(2) The statement of propositions and measures submitted to the voters may be abbreviated on the ballot if necessary, provided there is displayed in each voting booth or place prepared for the voter to mark his ballot the verbatim statement on each proposition or measure as it appears on paper ballots. Abbreviation of matter to be voted on throughout the state shall be done by the Secretary of State.

#### Preparation of Ballot and Program

Subd. 11a. The ballots to be used at an election shall be prepared and procured under the same regulations as ordinary paper ballots, except that the officer making up the ballot shall confer with the programmer for that election before ordering the ballots printed, to make sure that the ballot is properly prepared for counting by means of the electronic tabulating equipment which will be used.

The authority charged with the duty to provide ballots shall select a competent person to prepare the program for the electronic tabulating equipment. The programmer may be one of the persons appointed or approved by the commissioners court under Paragraph (b), Subdivision 20 of this section or some other person, but if the program is prepared by

anyone other than the tabulation supervisor, it must be submitted to the tabulation supervisor for his approval at least three days before the election.

#### Sample Ballots and Instruction Cards

Subd. 12. The authority charged with providing ballots for an election where an electronic voting system is used shall provide sample ballots and printed instruction cards for voting. Without limitation on other instructions which may be included, the instruction card shall include instructions on how to mark the ballot, how to vote for a person whose name is not printed on the ballot, how to vote a straight ticket or a split ticket where party columns or party affiliations are on the ballot, and how to secure an additional ballot if the ballot is spoiled or marked erroneously. Throughout the time the polls are open, a sample ballot and instruction card shall be posted in each booth or place prepared for the voter to mark his ballot. Extra voting equipment for demonstration purposes may be placed in the polling place.

#### Instructions to Voters

Subd. 13. In addition to the sample ballots and instruction cards hereinbefore mentioned, if any voter desires further instructions, an election officer shall give such instruction without asking, persuading, or otherwise trying to induce such voter to vote for or against any ticket, candidate, or measure, and watchers may be present while such instruction is being given. Finishing instructions, the election officer and watchers shall retire and the voter shall proceed to mark his ballot.

#### Assistance to Voter

Subd. 14. If because of some bodily infirmity a voter is physically unable to operate the voting equipment or to see, he may be assisted by two election officers, or by a person selected by the voter, who shall mark the ballot in accordance with the voter's wishes. The provisions of Section 95 of this code<sup>3</sup> govern the assistance rendered insofar as they can be made applicable.

#### Ballot Box and Stub Box

Subd. 15. For each polling place where an electronic voting system is used, there shall be supplied two ballot boxes for the deposit of voted ballots, which shall be of suitable design and with a suitable opening for placing the ballots therein in such manner that the ballots will not be damaged or rendered unfit for counting on the tabulating equipment. There shall be supplied a stub box prepared in the manner prescribed in Section 97 of this code,<sup>4</sup> except that the opening thereof shall be of such size as necessary, but no larger, to permit the convenient deposit of the ballot stubs used at the election. There shall also be supplied suitable containers for transporting the voted ballots to the central counting station.

## Preliminaries of Opening the Polls

Subd. 16. There shall be provided for each polling place sufficient voting equipment to accommodate the voters at the election. Before the time set for opening the polls, the presiding judge shall inspect the equipment to ascertain whether it is in good working condition. Each voting booth shall be so placed that it will be in full view of all election officers and watchers at the polling place but will permit a voter to mark his ballot in secret.

## Conduct of the Voting

Subd. 17. (a) The procedure at the polls where voting is by use of an electronic voting system shall be the same as at polling places where paper ballots are used, except as provided in this section. Where the portion of the ballot to be marked by the voter consists of more than one page or ballot card, the related parts may be placed in an envelope or otherwise secured so that the parts will not become separated before delivery to the voter. When a voter selects his ballot, he shall be instructed to use only the voting equipment provided for marking the ballot and that he is not to mark his ballot in any other way and is not to place any other marks thereon, except for write-ins. After a voter has marked his ballot, he shall follow the procedure prescribed in Section 97 of this code<sup>5</sup> for signing and detaching the ballot stub and for deposit of the ballot and stub.

(b) The election officers shall inspect the voting equipment from time to time while voting is in progress to ascertain that it has not been injured or tampered with and is in proper working order. If any equipment becomes out of order at an election, it shall be repaired or replaced as promptly as possible. If repair or replacement cannot be made, the ballots may be marked with a pencil and counted manually in the same manner that paper ballots are counted.

## Procedure while Polls are Open

Subd. 18. At any time after the expiration of one hour after the voting has begun, the presiding judge may direct the receiving officers to deliver ballot box No. 1 to the counting officers, who shall immediately deliver in its place ballot box No. 2, which shall be opened and examined and securely closed and locked; and until the boxes are again interchanged, the voters shall deposit their ballots in box No. 2. In this manner, ballot boxes No. 1 and No. 2 may be interchanged periodically as directed by the presiding judge, but the box for receiving the ballots shall not be delivered to the counting officers and the ballots shall not be removed from it at any time before the polls are closed unless there are more than ten ballots in the box. Once the box for receiving the ballots is delivered to the counting officers, they shall remove the voted ballots from the ballot box and carry out the procedures prescribed in Subdivision 19 of this section preparatory

to making the ballots, envelopes, and other materials ready for delivery to the central counting station. The authority holding the election may in its discretion also provide that voted ballots of designated precincts shall be delivered by authorized election officials, in the presence of watchers, to a central counting station at stated intervals during the day and that the processing of such ballots in accordance with the procedures prescribed in Subdivision 20 may begin prior to the close of the polls. Such processing may be limited by the authority holding the election to procedures preparatory to the counting and tabulating of ballots, or the authority holding the election may also permit the preliminary counting and tabulating of ballots with automatic tabulating equipment; but in no event shall any results be disclosed prior to the close of the polls, and all persons connected with the handling and tabulating of the ballots shall be subject to the provisions of Section 105 of this code<sup>6</sup> with respect to revealing information as to the results of the election.

## Procedure after Polls are Closed

Subd. 19. (a) As soon as the polls are closed and the last ballot has been deposited in the ballot box, the election officers shall immediately secure or inactivate all voting equipment in the polling place so that no equipment may be used or operated by any unauthorized person. They shall then remove from the ballot box all voted ballots not theretofore removed in accordance with Subdivision 18 of this section. They shall examine the ballots for write-in votes and count the votes cast for candidates whose names have been written in; provided, however, that if the voting system is such that write-in votes can be detected and segregated by the tabulating equipment, the counting of write-in votes may be done at the central counting station. Before any write-in vote is counted, the election officers shall examine the ballot to ascertain whether the write-in vote is valid, and count it only if it is found to be valid. A notation shall be made on the invalid portion of a ballot and it shall be segregated from other ballots and placed in the container provided for that purpose. Write-in votes shall be added to the results of the count of the ballots at the central counting station and be included in the official returns for the precinct. If the ballot consists of more than one part, the precinct election officials, after checking for write-in votes, shall then sort the ballots according to types or parts.

(b) All ballots not voted shall be handled in the manner provided in Section 100 of this code.<sup>7</sup> The presiding judge shall make out and sign a statement accounting for all ballots delivered to him, as provided in Section 100.

(c) The authority holding the election shall provide ballot containers made of metal, wood, or some other material approved by the secretary of state, with numbered metal seals, for use in delivering voted ballots from the polling place to the central

counting station. A record of the serial numbers of the seal shall be preserved, and a copy of such records shall be furnished the central counting station. All voted ballots which are to be counted by automatic tabulating equipment shall be placed in a ballot container at the polling place for delivery to the central counting station. The poll lists and tally sheets for write-in votes shall be enclosed in envelopes provided for that purpose and placed in the container with the voted ballots. Before sealing the ballot container, the election judge shall execute a certificate in triplicate recording the number of ballots placed in the container and the serial number of the seal. The certificate shall also be signed by an election clerk as witness and by at least two watchers of opposed interests if such there be. The original of the certificate shall be placed in the container with the ballots, and the container shall then be sealed so that no additional ballots may be deposited and no ballots may be removed without breaking the seal. One copy of the certificate shall be immediately mailed to the authority holding the election in a pre-addressed stamped envelope at the nearest post office or postbox by an election officer other than those who deliver the ballot container to the counting station. The other copy of the certificate shall be retained with the election records at the polling place.

(d) After the ballot container is sealed, two authorized election officers shall immediately deliver the ballot container to the central counting station, and watchers shall have the privilege of accompanying them. They shall deliver the container to the presiding judge of the central counting station or his designated representative, who shall give them signed receipts for the container, in a form specified by the secretary of state. The container shall be opened only by the presiding judge of the central counting station or his designated representative, who shall inspect the container and the seal and shall verify the serial number on the seal with the record of serial numbers provided by the authority holding the election and with the original certificate enclosed in the container. Any irregularities shall be reported to the presiding judge of the counting station, who shall take appropriate action. After the container has been opened and the ballots removed, the original certificate and the broken seal shall be preserved with the other permanent election records of the central counting station.

(e) As an alternative to the procedure provided above, the authority holding the election may in its discretion provide prelocked and presealed ballot boxes for use in designated precincts and require that ballot boxes be delivered to the central counting station in their locked and sealed condition and that the processing of voted ballots required to be performed at the polling place by the above provisions be performed at the central counting station. In that event, the authority holding the election shall provide an adequate number of ballot boxes for each polling place, which shall be locked and sealed prior

to delivery. Each ballot box shall be locked in such a way that it may not be opened except with a key of which only the election authority has possession and sealed with a numbered metal seal in such a way that the ballot box may not be opened without breaking the seal. A record of the serial numbers of the seals shall be preserved, and a copy of such record and the keys to the ballot box locks shall be furnished the central counting station. Upon completion of the voting at the polling place, or whenever a ballot box has been inactivated, the ballot box slot through which ballots are inserted shall be closed with a paper seal signed by the election judge, an election clerk, and two watchers of opposed interests if such there be. The ballot box containing the voted ballots shall then be delivered to the central counting station by the election officers in its locked and sealed condition under the same security measures as are provided in Paragraph (d) above for ballot containers. All procedures provided above to be performed at the polling place other than the processing of voted ballots shall be performed by the election officers at the polling place, and copies of all poll lists and reports shall be enclosed in envelopes provided for that purpose and inserted in the final ballot box to be delivered to the central counting station before the ballot box slot is sealed. The ballot box shall be opened at the central counting station only by the presiding judge of the counting station or his designated representative, who shall inspect the ballot box, the metal seal and the paper seal and shall verify the serial number on the metal seal with the record of serial numbers provided by the election authority. Any irregularities shall be reported to the presiding judge of the counting station, who shall take appropriate action. The presiding judge or his authorized representative shall give the two election officers who deliver the ballot box receipts in a form specified by the secretary of state. The broken metal and paper seal shall be preserved with the other permanent election records of the central counting station. After the ballot box has been opened, the voted ballots shall be processed in the manner provided in Paragraph (a) above by authorized central counting station election officers. In the event the election authority permits early processing of ballots at the central counting station as provided in Subdivision 18, emptied ballot boxes may be relocked and resealed at the central counting station by representatives of the election authority for further use at polling places.

(f) After the election officers at the polling place have delivered all ballots to the central counting station, the stub box, the ballot label assemblies, and all other election supplies and records, including all duplicate certificates and unused seals, shall be delivered to the proper authority designated by law to receive them.

Procedure at Central Counting Station

Subd. 20. (a) The commissioners court shall establish one or more central counting stations to

receive and tabulate voted ballots. The commissioners court shall appoint a competent person with experience in the conduct of an election under the system in use (herein called the manager of the central counting station), who shall be in charge of the overall processing of the ballots at the central counting station. He shall be responsible for setting up a plan for the orderly performance of the various duties required at the counting station and for making the necessary arrangements for the orderly handling of the ballots and other records after they are delivered to the counting station. Except as provided in Paragraph (e) of this subdivision, he shall assign the specific duties to be performed by the clerks employed at the counting station, and shall be responsible for the proper instruction of the clerks in the performance of their duties.

(b) The commissioners court shall appoint a competent person trained in the operation of the electronic tabulating equipment to be used (herein called the tabulation supervisor), who shall be in charge of the operation of the electronic equipment. The tabulation supervisor shall select the necessary personnel to assist him in the operation of the electronic equipment, and all persons selected by him shall be subject to the approval of the commissioners court as an assurance that they will possess the necessary competence, training, and experience to perform their duties satisfactorily. No person except one selected and appointed in accordance with these provisions shall operate any of the electronic equipment or handle the ballots from the time they have been turned over to the tabulation supervisor for counting until the counting is completed.

(c) The service of the trained personnel provided for in Paragraphs (a) and (b) of this subdivision is deemed essential to the successful operation of an electronic voting system, and the personnel provided for therein shall be employed in every election in which the system is used, by whatever authority conducted. The commissioners court shall fix the amount of compensation to be paid to them. The manager of the counting station must be a resident qualified voter of the county, except that during the first year after adoption of a system in a county, a nonresident may be appointed. Persons employed to operate the electronic equipment need not be residents or qualified voters of the county. Officers and employees of the county are eligible for appointment under both Paragraphs (a) and (b), and may be paid additional compensation for their services. Except as provided herein, persons employed under these two paragraphs are not subject to the qualifications and disqualifications for election judges and clerks as stated in Sections 17 and 18 of this code.<sup>8</sup>

(d) The board or body having authority to name the presiding judges for the election shall appoint a presiding judge for the central counting station, who shall be a qualified voter of the county if the election is countywide, and of the political subdivision in which the election is held if it is less than countywide. In other respects he shall be subject to

the same qualifications and disqualifications as the other presiding judges of the election. He shall perform the duties imposed on him by Subdivisions 19 and 20 of this section. He may be present at any time and at any place within the counting station and may make suggestions to and counsel with the manager and tabulation supervisor concerning any and all phases of the election. He shall possess the power given to a presiding judge by Section 87 of this code and shall be responsible for maintaining order at the counting station. He shall also supervise the service of the watchers, if any, and shall supervise the absences of all central counting station personnel, under the rules applicable to election clerks at regular polling places as stated in Section 16 of this code, between the time that actual counting of the ballots is begun and the time for official closing of the polls if counting is begun before the polls are closed. He shall be paid at the same rate and in the same manner as the other presiding judges of that election, except that he shall be entitled to a minimum of \$10 regardless of the number of hours worked.

(e) The manager and presiding judge of the central counting station shall appoint the clerks to serve at the counting station. The presiding judge may designate one or more clerks of his selection to assist in receiving the ballots and other records from the polling places and in performing the duties imposed on him after the ballots are counted. The manager shall select the clerks to assist in preparing the ballots for counting. Each clerk shall be a resident of the county but need not be a resident of the political subdivision holding the election if it is less than countywide. In other respects the clerks shall be subject to the same qualifications and disqualifications as the clerks serving at the polling places for the election and they shall be compensated under the same regulations as the other clerks; provided, however, that each clerk who serves for the full time that the counting station is in operation shall be entitled to a minimum of three hours' pay regardless of the number of hours worked.

(f) Prior to the start of the count of the ballots, the authority in charge of holding the election shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least 48 hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city or other political subdivision where such equipment is used, if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be conducted by processing a pre-audited group of ballots marked or punched so as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. The program-

mer, the tabulation supervisor, and the manager and presiding judge of the counting station shall be jointly responsible for preparing the test materials. In such test a different number of valid votes shall be assigned to each candidate for an office, and for and against each measure. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the presiding judge of the counting station before the count of the official ballots is started. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved as official. On completion of the test count made before the start of the count of the ballots, the test materials shall be sealed in a suitable container, using a paper seal signed by the tabulation supervisor, the manager, and the presiding judge of the counting station, and by at least two watchers of opposed interests if such are present at the test. The presiding judge shall have custody of the materials until the test is made at the conclusion of the count. On completion of that test count, the programs and test materials shall be sealed and retained as provided for paper ballots.

(g) The ballots for the various election precincts shall be separately tabulated by precincts. The ballots for a precinct shall be removed from their containers and prepared for processing by the automatic tabulating equipment. They shall be checked to ascertain that they are properly grouped and arranged so that all similar ballots from the precinct are together.

(h) The valid portion of a ballot which has been invalidated in part by the election officers as provided in Subdivision 19 of this section may be duplicated in the presence of watchers and substituted for the partially invalidated ballot, which shall be preserved, or such partially invalidated ballots may be counted manually.

(i) If it appears that a ballot cannot be counted by the automatic tabulating equipment, it may be counted manually or the manager of the counting station may cause a duplicate ballot to be made in the presence of the watchers and substituted for the original ballot, which shall be preserved. Each duplicate ballot prepared under either this paragraph or the preceding paragraph shall be clearly labeled with the word "Duplicate" and shall bear a serial number, which shall also be recorded on the original ballot.

(j) The manager shall be in charge of preparing the ballots for counting, and ballots shall not be turned over to the tabulation supervisor for counting until the manager or his designated representative has approved them as ready for counting.

(k) Upon completion of the count for each precinct, the presiding judge of the counting station shall add to the results as so determined the results of the write-in votes as counted and tallied by the precinct election officers and shall thereupon make a written return of the election in the number of copies required for elections where paper ballots are

used. The ballots, together with one copy of the returns, the poll list, and the tally list for write-in votes, shall be placed in a box made of metal, wood, or some other material approved by the secretary of state, which shall be securely locked. The voted ballots and all records of the election shall be delivered to the proper authorities as provided for election precincts where paper ballots are used. The presiding judge shall be responsible for the performance of the duties imposed by this paragraph.

(l) If for any reason it becomes impracticable to count all or a part of the ballots or ballot cards with tabulating equipment, the authority holding the election may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(m) If the automatic tabulating equipment used with any electronic voting system produces a printed record of the votes tabulated by such equipment, such printed record to which have been added the write-in and absentee votes shall, after being duly certified, constitute the official return for that precinct.

#### Applicability of Other Laws

Subd. 21. Except as otherwise provided in this section, the provisions of all other laws relating to the conduct of elections shall apply, so far as practicable, to the conduct of elections where electronic voting systems are used.

#### Preservation of Ballot Labels

Subd. 22. Where voting devices with ballot labels attached are used for voting, the ballot label assemblies, including the plastic ballot mask, shall be delivered to the same person, and kept intact for the same length of time, as are voting machines under Section 20 of Section 79 of this code.<sup>9</sup>

#### Post-Election Examination of Program and Other Materials; Recount

Subd. 23. At the time of making the official canvass, where an electronic voting system is used, upon the written request of any candidate whose name appears on the ballot or upon the written request of 25 voters of the county, city, or other subdivision for which the election was held (hereinafter called the petitioner), the authority charged with the duty of canvassing the returns shall defer a canvass on the office or proposition identified in the request until the procedure outlined in this subdivision has been completed. The request shall be directed to a district judge, with a copy to the presiding officer of the canvassing board. The request may ask for any one or more of the following, and it may be amended to include additional items at any time not later than 48 hours after completion of the procedures originally requested:

- (1) Permission to examine the program used in counting the ballots.
- (2) Permission to examine the materials used in making the test counts.

(3) Permission to examine the ballot assemblies for all or part of the voting devices, where a punch-card ballot is used.

(4) Permission to make a recount of the test count, using the program and the test materials.

(5) A recount of the ballots for all or part of the election precincts, using the same methods and materials as in the original count. A recount under this paragraph, or a recount of the test count, shall be made by a person selected and compensated by the petitioner, subject to approval by the district judge as to his competence to operate the electronic tabulating equipment. The recount may be made either on the equipment which was used for the official count at the central counting station or on any tabulating equipment located within the county which is capable of counting the ballots. If it is made on the equipment at the central counting station, the person in charge of the equipment must make the equipment available at a reasonable rate of compensation, to be paid by the petitioner. The petitioner shall also be responsible for any expense involved in using any other equipment. A return of the results of the recount shall be made and certified by the person making the recount, and shall be attested by the manager and tabulation supervisor of the central counting station.

(6) A manual recount of the votes cast on the office or proposition identified in the request. The recount shall be made by a committee of two or more persons appointed by the district judge, and they shall be compensated at the same rate as the election judges and clerks for the election. The district judge shall make a preliminary estimate of the cost and shall require the petitioner to make a deposit in that amount before the recount is ordered. A return of the results of the recount shall be made and certified by the committee.

(7) A recount of the ballot for all or part of the election precincts, using corrected materials as detailed herein. If an examination or utilization of the program, the ballot assemblies, or the test count materials reveals an apparent error in the preparation or use of the materials or a defect in the functioning of the equipment which affected the outcome of the election, the petitioner shall make a written report to the district judge, copies of which shall be furnished to the presiding officer of the canvassing authority, the programmer for the election, and the manager, tabulation supervisor, and presiding judge of the central counting station. If the programmer, manager, and tabulation supervisor unanimously agree that the error or defect does exist and that it can be remedied so that the true results of the election can be ascertained, the correction shall be made under supervision of the district judge; and the manager, tabulation supervisor, and presiding judge

shall recount the ballots and prepare corrected returns in the same manner as for the original count. Any other relief incident to an examination of materials and request for a recount under this paragraph must be obtained through an election contest filed in a district court.

Upon presentation of an order signed by the district judge, the custodian of the election records shall deliver them into the custody of the person designated in the order to be responsible for their safekeeping while they are being used. After the use is completed, they shall be returned to the original custodian for safekeeping in the same manner as when they were originally delivered to him. The district judge or someone designated by him to serve in his place and the manager and the tabulation supervisor of the central counting station where the ballots were counted shall be present at all times while the election records are being used. The manager and tabulation supervisor shall be paid at a reasonable rate of compensation for time spent in performing the duties imposed by this subdivision, except that the authority responsible for the expenses of the election shall determine what compensation, if any, they shall receive for making a corrected recount as outlined in numbered Paragraph (7) of this subdivision. Except for their services in that capacity, the district judge shall require the petitioner to make a deposit to cover estimated costs for their services.

Whenever a recount is ordered, by whatever method it is to be made, each opposing candidate must be given notice of the time and place for making the recount and may be present or have a representative present to observe the proceeding. If the recount is for an election on an issue or proposition, the district judge may order that notice be given to such persons or groups as he deems desirable to provide representation for the opposing interest. The returns made on the recount shall be used in lieu of the original returns in the official canvass of the election for the office or proposition identified in the request; provided, however, that if any write-in ballots, absentee ballots, or other ballots were not recounted, the original returns shall be used as to those ballots.

If as a result of the recount the outcome of the election is changed favorable to the petitioner, any deposit for costs which the petitioner has made shall be returned to him, and the authority responsible for the expenses of the election shall pay the costs of the recount and shall reimburse the petitioner for any expenditure he has made for equipment and personnel in having the recount made; provided, however, that if the central counting station equipment and personnel were not used, the amount of reimbursement shall not exceed the amount which use of that equipment and personnel would have cost. If the recount does not change the outcome, the petitioner shall pay all costs. A change in the outcome of the election favorable to the petitioner means that as a result of the recount the proposition identified in the request carries, or the candidate identified in the

request is declared to have been nominated or elected to the office, or to have become entitled to be a candidate in a runoff election, or to have tied with another candidate between the two of whom the right of nomination, election, or a place on a runoff ballot is to be decided.

Penal Provisions

Subd. 24. (a) No person may:

(1) wilfully tamper with or damage any voting equipment, as defined in Subdivision 1 of this section, or any automatic tabulating equipment, to be used or being used in any election;

(2) wilfully prevent or attempt to prevent the correct operation of any voting equipment or automatic tabulating equipment;

(3) wilfully program or attempt to program any automatic tabulating equipment so as to produce an inaccurate count in an election; or

(4) intentionally repunch a ballot card to reflect a vote contrary to the intent of the voter.

(b) A person who violates any provision of this section is guilty of a felony, and upon conviction is punishable by imprisonment in the penitentiary for not less than three nor more than five years, or by a fine of not less than \$500 nor more than \$1,000, or by both.

(c) Except as they conflict with the provisions of this section, the provisions of the Penal Code of Texas, 1925, as amended, relating to paper ballots, apply also to ballot cards.

[Acts 1967, 60th Leg., p. 1888, ch. 723, § 29a, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 19, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, § 20, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, § 20, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, § 21, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, § 22, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, § 20, eff. Sept. 1, 1969.]

<sup>1</sup> Article 5.05.

<sup>2</sup> Article 6.05.

<sup>3</sup> Article 8.13.

<sup>4</sup> Article 8.15.

<sup>5</sup> Article 8.15.

<sup>6</sup> Article 8.23.

<sup>7</sup> Article 8.18.

<sup>8</sup> Articles 3.03, 3.04.

<sup>9</sup> Article 7.14, § 20.

A former article 7.15, relating to transportation of voting machines in counties of 300,000 to 355,000, and derived from Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 80, was repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).

**Art. 7.16. Runoff Elections in Cities and Towns of over 200,000; Voting Machines; Ballot**

Sec. 1. In all cities and towns in this State, whether incorporated under General or Special Law, (including home rule cities) having a population in excess of two hundred thousand (200,000) inhabitants, according to the last preceding or future Federal Census the election of candidates for all municipal offices shall be determined in the following manner:

(a) Election by majority vote. Any candidate for office in any duly held municipal election receiving a majority of all the votes cast for the office for which he is a candidate shall be elected to such office.

(b) In the event any candidate for either of said offices fails to receive a majority of all votes cast for all the candidates for such office at such election the Mayor of said city shall, on the first day following the completion of the official count of the ballots cast at said first election, issue a call for a second election to be held in said city on the second Tuesday following the issuance of such call, at which said second election the two (2) candidates receiving the highest number of votes for any such office in the first election at which no one was elected at said first election by receiving a majority of all votes cast for all candidates for such office, shall again be voted for. The official ballot to be used at said second election shall be prepared by the City Clerk or City Secretary and the name of no person shall appear thereon unless he was a candidate for the office designated at said first election, and the two (2) persons receiving at said first election the first and second highest number of votes cast for candidates for such office at such first election shall be entitled to have their names printed on said official ballot in the order of their standing in the computation of the votes cast for such candidates at said first election as candidates at said second election for such office; provided, however, that in the event any person who was a candidate at said first election and who shall be entitled to become a candidate at such second election shall fail to request that his name shall appear on the official ballot therefor at such second election as herein provided, the candidate for such office standing next highest in the computation of votes shall succeed to the rights of such candidate who failed to request that his name appear upon the ballot at said second election; provided further, that two (2) candidates for such office at said first election shall be entitled to become candidates therefor at said second election, which two (2) candidates shall be those two (2) among such candidates as shall stand highest respectively in the computation of all votes cast for all the candidates for such office at said first election as shall file written request to be placed on the official ballot as candidates for such office at said second election. In the event of a tie in the vote for the two (2) leading candidates for any office at said first election, said office shall be filled at a second election as herein provided for, at which such candidates so tied in said first election may again become candidates. In the event such candidates who tied in said first election, or either of them, shall fail so to do, the two (2) candidates for such office who are next highest in the computation of votes therefor and

who desire to become candidates therefor at said second election shall be entitled so to do in order of the number of votes they respectively received at said first election. In the event of a tie between the two (2) candidates for any office at said second election, they shall cast lots to determine who shall be elected to such office.

Sec. 2. This law shall not apply to any city whose charter now, or hereafter, provides for the selection of its officers by means of a preferential type of ballot; provided that such city does not use voting machines as the legal method of voting.

Sec. 3. The procedure provided in Section 1 hereof shall apply whether voting machines are used or not, but if voting machines are used, and a second election is called for any purpose so soon after a preceding election that the use of voting machines in the second election would be impracticable, then the authority calling the second election may authorize the use of paper ballots in such second election, and the general laws regarding paper ballots provided in this Code shall apply.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 81; Acts 1961, 57th Leg., p. 88, ch. 51, § 2.]

**Art. 7.17. Inapplication to Elections in which Voting Machines Used**

The provisions of Articles 38, 61, 73, 93, 187, and 200, relating to the use of the stub ballot, shall not apply to elections in which voting machines are used as provided elsewhere in this Code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 82; Acts 1961, 57th Leg., p. 88, ch. 51, § 1.]

**CHAPTER EIGHT. CONDUCTING ELECTIONS AND RETURNS THEREOF**

Article

- 8.01. Officers of Election Sworn.
- 8.02. Preliminary Arrangements.
- 8.03. Instruction Card Posted.
- 8.04. Presiding Judge Absent.
- 8.05. Power of Presiding Judge.
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Article

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**Art. 8.01. Officers of Election Sworn**

Before opening the polls, the presiding judge of election and each of the other judges (if any) and clerks who are present at the opening of the polls shall repeat in an audible voice: "I solemnly swear that I will not in any manner request or seek to persuade or induce any voter to vote for or against any candidate or candidates, or for or against any proposition to be voted on; and that I will faithfully perform this day my duty as officer of the election, and guard as far as I am able, the purity of the ballot box, so help me God." Each clerk who commences his service at any time thereafter shall also repeat the oath before performing any of his duties as an election officer.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 83; Acts 1963, 58th Leg., p. 1017, ch. 424, § 55.]

**Art. 8.02. Preliminary Arrangements**

The presiding judge and such clerks as he designates shall meet at the polling place in sufficient time before opening of the polls to complete the preliminary arrangements required by this section. However, no judge or clerk shall be paid for more than one hour of work before the polls open. Watchers may be present during any or all of the time that the preliminary arrangements are being made. Before opening of the polls, the election officers shall arrange the guard rail, the space within the guard rail, the voting booths, if any, and the furniture for the orderly and legal conduct of the election. The election officers shall then examine the ballot boxes and the blank official ballots to see that they are properly printed and numbered, removing any unnumbered or otherwise defectively printed ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4, for defective, mutilated, and unused ballots. They shall examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certi-

fied list of voters, rubber stamps and all things required for the election. The package of official ballots shall remain in the custody of the presiding judge and shall not be opened until the morning of the election and at the polling place. The presiding judge shall cause to be placed, at the outer limits of the area prescribed in Section 109<sup>1</sup> within which loitering and electioneering are prohibited, visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: "Distance marker. No electioneering or loitering between this point and the entrance to the polls." The election officers shall examine the ballot boxes and then relock them, after all present can see that they are empty. The ballot clerks with official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of registered voters for the precinct shall be as conveniently near each other as practicable within the polling place.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 84; Acts 1963, 58th Leg., p. 1017, ch. 424, § 56; Acts 1967, 60th Leg., p. 1900, ch. 723, § 30, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.27.

#### Art. 8.03. Instruction Card Posted

Before the election begins, one instruction card shall be posted conspicuously near each distance marker and one posted up in each voting booth where it can be read. When there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 85.]

#### Art. 8.04. Presiding Judge Absent

If no presiding judge was appointed or fails to act or fails to attend on election day, the voters present may appoint their own presiding officer, who is a qualified voter, and they may also appoint the necessary assistant judges of election. When a presiding officer who has been appointed by a Commissioners Court fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk having been appointed fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place another with the same qualifications, and return a certificate of such appointment with each election return.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 86.]

#### Art. 8.05. Power of Presiding Judge

Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or

breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 87.]

#### Art. 8.06. To Inspect Ballot Boxes

Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 88.]

#### Art. 8.07. Present Poll Tax Receipt

No citizen shall be permitted to vote, except as provided in the Constitution of Texas unless he first presents to the judge of election his poll tax receipt or certificate unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, which shall be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his receipt or certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this Code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 89.]

#### Art. 8.08. Procedure for Accepting Voter; Signature Roster

Subd. 1. An election officer shall receive from the voter his registration certificate, when he presents himself to vote. If the voter has lost or mislaid his certificate or left it at home, he shall make an affidavit of that fact. The election officer shall announce the voter's name in an audible voice and shall ascertain that his name appears on the list of registered voters or shall satisfy himself, in the manner stated in Section 48a of this code,<sup>1</sup> that the voter is a registered voter and is entitled to vote in that precinct. He shall then require the voter to sign the signature roster provided for in Subdivision 3 of this section. If the voter has presented his registration certificate, the election officer shall compare the signature on the roster with the signature on the certificate to see that it is the same. If he finds that the signatures do not correspond, he shall not allow the voter to vote unless the voter complies with the procedure prescribed in Section 91 of this code<sup>2</sup> for acceptance of a challenged voter.

Subd. 2. When a voter is accepted for voting, the election officer shall place a notation on the list of

registered voters showing that he has voted and shall enter the voter's name on the poll list. The names on the poll list shall be entered in the same order as the names on the signature roster. The officer shall return the registration certificate to the voter and shall allow him to select his ballot. The voter shall then immediately retire to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law.

Subd. 3. There shall be kept at each polling place a signature roster of persons offering to vote at the election. Each person offering to vote shall sign the roster if he is able to do so. If a voter is unable to sign his name, an election officer shall enter the voter's name on the roster and shall make a notation of whether the voter is unable to sign because of physical disability, blindness, or illiteracy. If a person is rejected for voting after signing the roster, the presiding judge shall make a notation of that fact by the person's name, stating the reason for the rejection. After the election is over, the signature roster shall be returned with the copy of the poll list which is intended for public inspection and shall be preserved under the same rules as the poll list. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 90; Acts 1971, 62nd Leg., p. 2523, ch. 827, § 17, eff. Aug. 30, 1971.]

<sup>1</sup> Article 5.16a.

<sup>2</sup> Article 8.09.

#### Art. 8.09. Vote Challenged

When a person offering to vote at any general, special, or primary election shall be objected to by an election judge or clerk, a poll watcher, or any other person, the presiding judge shall examine him upon oath touching the points of such objection, and if such person establishes his right to vote to the satisfaction of the presiding judge, he shall be permitted to vote, and the word "sworn" shall be written upon the poll list opposite the name of the voter. If upon his own oath the person fails to establish his right to vote to the satisfaction of the presiding judge, his vote shall not be accepted unless in addition to his own oath he submits proof by the oath of one well-known resident of the precinct that he is a qualified voter at such election and in such precinct. When such proof is submitted, his vote shall be accepted, and the word "challenged" and the name and address of the person testifying under oath as to the voter's qualifications shall be written on the poll list opposite the name of the voter.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 91; Acts 1963, 58th Leg., p. 1017, ch. 424, § 57.]

#### Art. 8.10. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963

#### Art. 8.11. Delivery of Ballot

Subd. 1. After all defectively printed ballots have been removed, the presiding judge shall cause his signature to be placed on the back of each ballot to be used at the election. The ballots may be signed by the presiding judge in his own handwriting, or they may be stamped with a facsimile of his

signature by the presiding judge or by another election officer under his direction. Where a stamp is used, the presiding judge shall take the necessary precaution to see that the stamp is properly safeguarded at all times so that no unauthorized use may be made of it.

Subd. 2. After the signature of the presiding judge is placed on the back of the ballots, one of the election officers shall thoroughly disarrange and mix the ballots so that they no longer are in consecutive numbered sequence or in any sequence of arithmetic or geometric progression, and then place the ballots face down in a stack or stacks from which each voter shall be allowed to take his own ballot without the number being known to or written down in any manner by an election officer.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 93; Acts 1963, 58th Leg., p. 1017, ch. 424, § 58; Acts 1971, 62nd Leg., p. 2524, § 18, eff. Aug. 30, 1971.]

#### Art. 8.12. Marked Ballot

At either a general, special or primary election, any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot on paper, if he has one. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 94.]

#### Art. 8.13. Aid to Voter

Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same himself because of some bodily infirmity, such as renders him physically unable to write or to see, in which case two officers of such election shall assist him, they having first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; that they will confine their assistance to answering his questions, to stating the propositions to be voted on, and to naming candidates and the political parties to which they belong; and that they will prepare his ballot as such voter himself shall direct. If the election is a general election, the election officers who assist such voters shall be of different political parties, if there be such officers present. One or more watchers may be present when the assistance herein permitted is being given, but each watcher must remain silent except in cases of irregularity or violation of the law.

"Instead of being assisted by two election officers as hereinabove provided, a voter who is entitled to assistance may select any qualified voter residing in the precinct to assist him, and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person

selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering his questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare his ballot as the voter himself shall direct."

Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 95; Acts 1957, 55th Leg., p. 338, ch. 153, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 59.]

#### Art. 8.13a. Use of English Language; Interpreter

No election judge or clerk shall use any language other than the English language in performing any duty as such judge or clerk of the election, except that it shall be permissible for him to use some other language when examining, aiding, or giving instructions to a voter who does not understand the English language. Any voter unable to speak or understand the English language may communicate with the election officer in some other language, and if the election officer is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the precinct. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the presiding judge: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by any election officer and each question, answer, or statement addressed to any election officer by the voter." When any language other than the English language is used either by the voter or by an election officer, any election officer or any watcher shall be entitled to request and receive a translation into the English language of anything spoken in another language.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 60.]

#### Art. 8.14. Officers not to Electioneer

No election judge, clerk or other person connected with the holding of an election, shall on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of the preceding Section [art. 8.13].

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 96.]

#### Art. 8.15. Stub Box

Subd. 1. Preparation of stub box. In every general, special, or primary election, the authority charged with the duty of furnishing supplies for the election shall cause to be prepared for each polling place a stub box, as other boxes of the election, except that the opening thereof shall not exceed

one-sixteenth of an inch in width and two and one-fourth inches in length. The stub box shall be submitted to the district clerk of the county, who shall seal it by placing a short ribbon through the hasp on the box and securing the ends of the ribbon with two gummed seals, which shall be sealed together by affixing thereto the seal of the court, so as to make it impossible to open the box without breaking the seal. The district clerk further shall prepare in triplicate a certificate showing the number of the box, the date of the election, and the nature of the election. He shall then place one copy of the certificate in the box before sealing it, shall attach one copy to the outside of the box, and shall retain one copy in his files. The stub box shall be delivered to the election judge at the same time the regular ballot boxes are distributed, and the election judge shall return the box to the district clerk at the time he delivers the regular ballot boxes to the designated place.

Subd. 2. Custody of stub box. Upon the return of the stub box, the district clerk shall keep the box secure, as other papers of the district court, and shall allow no one to open the box except by order of the district court, upon the trial of an election contest involving the contents of the box or in connection with a criminal investigation. The box shall be treated as other papers of the district court with the exception that it shall not be opened except by order of the court, and the court further shall have the power to punish anyone found guilty of violating the provisions of this subdivision as contempt of court. In event of any contest or criminal investigation growing out of the election within sixty days after the day of the election, the district clerk shall deliver the ballot box to any competent officer having process therefor, for any tribunal or authority authorized by law to demand the box. If no contest or criminal investigation arose out of the election within sixty days after the day of the election, the contents of the box shall be destroyed by fire under the direction of the district judge and in the presence of the county judge and district clerk; provided, that the district judge upon his own motion or upon the request of the county or district attorney, may, by an order entered on the minutes of the district court, defer the destruction of the contents of the box for such period as he deems necessary, subject to further orders of the court.

Subd. 3. Depositing ballots. When a voter who is voting in person shall have prepared his ballot, he shall immediately detach therefrom the perforated stub and affix his signature to the back of the same and deposit it in the stub box before depositing his ballot and without disclosing to anyone the number of his stub. Should the voter be unable to sign his name, he shall place the stub face down so as not to expose the number of his stub and he shall sign the same with an "X" with the election judge placing the voter's name in the election judge's own handwriting, and the voter shall then drop the stub in the stub box before the voter deposits his ballot. The

voter shall then fold the ballot so as to conceal the printing thereon, and so as to expose the signature of the presiding judge on the back of the ballot, then deposit the ballot in the proper ballot box. If a voter signs the stub but fails to detach it before depositing the ballot in the ballot box, the counting officer shall detach the stub and deposit it in the stub box without examining the ballot, and the ballot shall be counted. If a ballot with an unsigned, undetached stub is deposited in the ballot box, the ballot with stub attached shall be placed in ballot No. 3 for voted ballots but shall not be counted.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 97; Acts 1963, 58th Leg., p. 1017, ch. 424, § 61.]

#### Art. 8.16. Mutilated Ballots

At any general or primary election no voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first return such ballot. No one shall be supplied with more than three (3) ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots which shall be deposited in box No. 4. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 98.]

#### Art. 8.17. Bystanders Excluded

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and supervisors, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, and supervisors of election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 99.]

#### Art. 8.18. Defective, Mutilated, and Unused Ballots in Box No. 4

In any general, special, or primary election, there shall be deposited in ballot box No. 4, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The term "defaced and mutilated ballot" as used in this article means a ballot which has been returned by the voter as provided in Section 98 of this code.<sup>1</sup> It does not include any ballot which a voter has deposited in the ballot box containing ballots to be counted, and the election officers shall place in ballot box No. 3 with other voted ballots any ballot which has been voted but which they refuse to count by reason of its being marked in an unintelligible manner or for any other reason. Ballot box No. 4 shall be locked and shall be delivered to the county judge or other officer receiving the returns for use in the official canvass, at the same time that the returns are delivered, with a statement which shall be placed therein, signed by the presiding judge, of the number of ballots received by him, the number of mutilated or defaced

ballots that the box contains, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots delivered to the election officers may be accounted for. When the returns of votes cast are canvassed by the commissioners court or other authority as provided for by law, such ballot box shall be opened, the ballots counted, and a record made of what they found the contents to be. The box shall then be relocked and delivered to the county clerk or other officer having custody of the voted ballots, and shall be preserved by him until expiration of the period for contesting the election. If no contest has arisen, the custodian of the box may then destroy or otherwise dispose of the contents as he sees fit. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 100; Acts 1963, 58th Leg., p. 1017, ch. 424, § 62; Acts 1969, 61st Leg., p. 2662, ch. 878, § 23, eff. Sept. 1, 1969.]

<sup>1</sup> Article 8.16.

#### Art. 8.19. Deposit and Count

In all elections, general, special, or primary, at the expiration of one hour after voting has begun, the receiving officers shall deliver ballot box No. 1 to the counting officers, who shall at once deliver in its place ballot box No. 2, which shall again be opened and examined and securely closed and locked; and until the ballots in box No. 1 have been counted, the voters shall deposit their ballots in box No. 2. Ballot box No. 1 shall, upon its receipt by the counting officers, be immediately opened and the ballots taken out by one of them, who shall read and distinctly announce while the ballot remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheet. The ballot shall then be placed in box No. 3, which shall remain locked and in view until the counting is finished, when the box shall be returned, locked and sealed, to the county clerk or other officer as provided by law. Ballot boxes No. 1 and 2 shall be used by the receiving officers and the counting officers alternately, as above provided, as often as the counting officers have counted and exhausted the ballots in either box. It is provided, however, that the box for receiving the ballots shall not be delivered to the counting officers and the ballots shall not be removed therefrom at any time before the polls are closed unless there are more than ten ballots in the box. After the polls have closed, the counting of votes shall proceed continuously until all of the votes are counted and the returns are properly certified and signed.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 101; Acts 1963, 58th Leg., p. 1017, ch. 424, § 63; Acts 1967, 60th Leg., p. 1900, ch. 723, § 31, eff. Aug. 28, 1967.]

#### Art. 8.19a. Counting Straight-ticket Ballots

In an election where party columns appear on the official ballot, the tally sheets for the election shall be prepared with appropriate spaces for tallying straight-ticket ballots. Each straight-ticket ballot voted shall be tallied for the party receiving the vote instead of being tallied for the individual candidates

of the party. When the presiding judge makes out the returns for the election, to the number of votes tallied for each party nominee individually there shall be added the number of straight-ticket votes tallied for the party which nominated the candidate. [Acts 1969, 61st Leg., p. 2662, ch. 878, § 24, eff. Sept. 1, 1969.]

#### Art. 8.20. Examining Ballots

No officer of election shall unfold or examine the face of a ballot when received from an elector, nor the endorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor shall he permit the same to be done; nor shall he examine or permit to be examined the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases especially provided by law. No official of the election shall make any note of the number of the ballot or any note that would make possible for the identification of a ballot delivered to a voter. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 102.]

#### Art. 8.21. Ballots Not Counted

The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, shall count no ballot where two (2) or more are folded together, or is unnumbered. If the names of two (2) or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. Likewise no ballot shall be counted if it is found to be fraudulent, but in the absence of a showing of fraud the mere failure of the presiding judge to sign the ballot shall not make any such ballot illegal.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 103.]

#### Art. 8.22. Death, Declination, Withdrawal or Ineligibility of Candidate before Election

(a) If a nominee dies or declines the nomination before the election, or is declared ineligible to be elected to or to hold the office for which he is a candidate, and no one is nominated to take his place, his name shall be printed on the ballot and the votes cast for him shall be counted and return made thereof; and, if he shall have received a plurality of the votes cast for the office, the vacancy shall be filled as in case of a vacancy occurring after the election.

(b) If after the 30th day preceding the first primary election, an opposed candidate in that primary dies or an opposed candidate who is seeking nomination to an office he then holds withdraws his candidacy or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased, withdrawn, or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the

proper officer, as provided in Section 233 of this code,<sup>1</sup> to be printed on the general election ballot. If such a deceased, withdrawn, or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased, withdrawn, or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If an unopposed candidate in the first primary dies, withdraws, or is declared ineligible after the 30th day preceding the first primary, neither the office title nor the name of the candidate shall be printed on the primary ballot, and the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. If a candidate whose name is to appear on the second primary ballot dies between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code.<sup>2</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 104; Acts 1963, 58th Leg., p. 1017, ch. 424, § 64; Acts 1967, 60th Leg., p. 1901, ch. 723, § 32, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 25, eff. Sept. 1, 1969.]

<sup>1</sup> Article 13.56.

<sup>2</sup> Article 13.26a.

#### Art. 8.23. Revealing Information before Polls are Closed

It shall not be unlawful for any presiding judge of an election to reveal at any time the number of votes that have been cast up to that time, but it shall be unlawful for any judge, clerk, watcher, or other person connected with the holding of an election, before the hour for closing the polls, to reveal any information as to the names of persons who have or have not voted at the election, or as to the votes that have been received for or against any proposition or candidate, or as to the candidate who is leading or trailing in the tabulation of the votes. Anyone who violates any provision of this section is guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 105; Acts 1963, 58th Leg., p. 1017, ch. 424, § 65; Acts 1967, 60th Leg., p. 1901, ch. 723, § 33, eff. Aug. 28, 1967.]

#### Art. 8.24. Status of Count Announced

Immediately upon the closing of the polls, and at intervals of two (2) hours thereafter, one of the judges of election shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the official ballot; and thereupon

he shall publicly announce from such memorandum, the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially to newspaper reporters who may call for information; and the presiding judge and associate judge may furnish reporters information concerning the status of the count at other times after the polls have been closed. The announcement of the status of the count shall continue, as aforesaid, until the count has been completed, when a correct but unofficial announcement of the total number of votes received by each candidate shall be made as above provided. In all general, special or primary elections, the presiding judge of election shall, upon the completion of the count, immediately transmit by telephone or by more expeditious means, if available, to the office of the county clerk if the election be a general or special election, or to the county chairman, if a primary election, an unofficial but complete report of the number of votes cast for each candidate, and/or cast for or against each proposition submitted to the voters for determination. No judge, clerk, supervisor or other officer of election shall make any statement, or give any information in any manner, of the number of votes cast for or against any candidate or for or against any proposition submitted to the people, or convey to any person his opinion regarding the state of the polls until after the closing thereof, and then only as herein expressly permitted. The provisions of this Section shall apply to all elections, general, special or primary.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 106.]

#### Art. 8.25. Tabulation of Unofficial Returns

Sec. 1. The county clerk in case of general or special election, or the county chairman if a primary election, shall tabulate such unofficial returns when received, and at convenient intervals until midnight of election day shall announce or have announced at the courthouse door, or some other designated place, the total number of votes, as far as tabulated at the time, counted for each candidate, and/or for or against each proposition submitted to the voters for determination. When returns from each precinct of the county shall have been tabulated the county clerk or county chairman shall immediately prepare an unofficial memorandum of the total number of votes received by each candidate, and/or cast for or against each proposition submitted to the people, and shall post a copy of the same at the courthouse door or at some other designated public place in the county.

Sec. 2. For receiving unofficial returns by telephone and tabulating them as herein provided, the county clerk or county chairman and assistants employed in the work shall receive the same compensation per hour as allowed precinct judges of election.

Sec. 3. Charges for telephone or other service in transmitting unofficial returns to the county clerk in

general or special elections shall be payable out of the general fund of the county. Charges for such services in primary elections shall be payable out of the funds of the political parties holding such elections.

Sec. 4. The tabulation of unofficial returns shall be preserved for public inspection until such time as official returns shall have been tabulated; thereafter, the unofficial tabulation may be destroyed.

Sec. 5. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 107; Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).]

#### Art. 8.26. Privilege from Arrest

In all cases except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 108.]

#### Art. 8.27. Electioneering or Loitering near Polls

(a) It shall be unlawful for any sound truck to approach within one thousand feet of a polling place during the hours the polls are open for the purpose of making any political speeches or electioneering for or against any proposition or candidate.

(b) It shall be unlawful for any person to do any electioneering or loitering while the polls are open within one hundred feet of any outside door through which a voter may enter the building in which a polling place is located. The presiding judge shall prevent unlawful electioneering or loitering, and for this purpose he may appoint a special peace officer to enforce this authority upon approval of the appointment by the presiding officer of the canvassing authority for the election. Notwithstanding the general authority granted to election judges in Section 87 of this code,<sup>1</sup> a special peace officer appointed by the presiding judge shall not undertake to enforce the provisions of this section unless his appointment has been approved as required herein.

(c) Any person who operates a sound truck, either as the driver of the vehicle or as the speaker or operator of the sound equipment, in violation of this section, or who does any electioneering or loitering in violation of this section, is guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 109; Acts 1967, 60th Leg., p. 1901, ch. 723, § 34, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.05.

#### Art. 8.28. Disabled Voter

If any voter is physically unable to enter the polling place without assistance, two (2) of the judges of the election or primary may deliver an official ballot to him at the entrance of the polling place and permit him to make out his ballot and cast it for him.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 110.]

**Art. 8.29. Returns of Elections held by the County**

When the ballots have all been counted, the presiding judge of the election in person shall make out returns of the same certified to be correct and signed by him officially, showing:

- (1) the total number of votes polled at such polling place, and
- (2) the total number of votes polled for each candidate and/or the number polled for or against any proposition voted on.

One of the returns, together with a poll list and tally list, shall be sealed up in an envelope and delivered by the presiding judge to the county judge of the county for use in the official canvass of the result. Another of said returns, together with a poll list and tally list, shall be delivered to the county clerk of the county to be kept by him in his office open to inspection by the public for sixty days from the day of the election. Another of said returns, together with a poll list and tally list, shall be placed in the ballot box containing the voted ballots; and the other of said returns, together with a poll list, shall be retained by the presiding judge of the election for sixty days from the day of the election. In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns for use in the official canvass shall be delivered to the county clerk of the county, who shall safely keep the same in his office, and he, or the county judge, shall deliver the same to the Commissioners Court on the day appointed by law to open and canvass the returns of the election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 111; Acts 1963, 58th Leg., p. 1017, ch. 424, § 66.]

**Art. 8.29a. Returns of Other Elections**

When some other statute regulating the conduct of a specific type of election provides the procedure for making returns of the election, for canvass of the returns, or for custody and disposition of the voted ballots, those provisions shall govern such matters in the conduct of the election. In the absence of such other law, the provisions of this Code applicable to elections held by the county, as modified by this section, shall govern such matters for all elections held by cities, school districts, and other political subdivisions of this state, insofar as these provisions can be made applicable, and references in this Code to the county judge, commissioners court, and the county clerk shall be deemed to mean the appropriate officer or board, as herein provided, for the type of election involved.

Unless otherwise provided by law, the returns of all elections held at the expense of the county shall be canvassed by the Commissioners Court, and the copy of the precinct returns and accompanying records for use in the official canvass shall be delivered to the county judge. The county clerk shall have custody of the voted ballots; the copy of the returns and accompanying records for public inspection shall be delivered to the county clerk; and the

keys to the ballot boxes containing the voted ballots shall be delivered to the sheriff.

Unless otherwise provided by law, the returns for all municipal elections shall be canvassed by the city governing body and the copy of the precinct returns and accompanying records for use in the official canvass shall be delivered to the mayor. The city secretary or clerk shall have custody of the voted ballots; the copy of the returns and accompanying records for public inspection shall be delivered to the city secretary or clerk; and the keys to the ballot boxes containing the voted ballots shall be delivered to the city marshal or chief police officer. If the city has no city marshal or chief police officer, or if such office is vacant, the keys shall be delivered to the sheriff of the county in which the city is located, and if located in more than one county, to the sheriff of the county in which the office of the mayor is maintained.

Unless otherwise provided by law, the returns of all elections held by school districts, conservation districts, and other political subdivisions shall be canvassed by the governing board of the subdivision holding the election, and the copy of the returns and accompanying records for use in the official canvass shall be delivered to the presiding officer of the governing board. The governing board shall make proper provision for custody, storage, and safekeeping of the ballot boxes containing the voted ballots, which shall be delivered to the presiding officer or to such other person as the governing board shall direct. The copy of the returns and accompanying records for public inspection shall be delivered to the presiding officer of the governing board. The keys to the ballot boxes containing the voted ballots shall be delivered to the constable of the justice precinct in which the office of the governing board of the subdivision is maintained. If the office of constable is vacant, the keys shall be delivered to the sheriff of the county in which the office of the governing board of the subdivision is maintained.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 67.]

**Art. 8.29b. Copies of Returns, Poll Lists, and Tally Lists; Distribution**

(a) In precincts using paper ballots. In all general, special, and primary elections, the number of copies of the returns, poll list, and tally list required for each precinct in which paper ballots are used shall be as follows: four copies of the returns, four copies of the poll list, and three copies of the tally list. These records shall be distributed as follows:

- (1) One copy of the returns, poll list, and tally list shall be delivered to the presiding officer of the authority which canvasses the returns (the county judge in elections held by the county; the mayor in city elections; the presiding officer of the governing board in elections held by other political subdivisions; and the chairman of the county executive committee in county primary elections) and shall be preserved by the

canvassing authority for sixty days from the day of the election.

(2) One copy of the returns, poll list, and tally list shall be delivered to the proper officer (the county clerk in elections held by the county and in county primary elections; the city secretary or clerk in municipal elections; and the presiding officer of the governing board in elections held by other political subdivisions), to be kept by him in his office open to inspection by the public for sixty days from the day of the election.

(3) One copy of the returns, poll list, and tally list shall be placed in the ballot box containing the voted ballots.

(4) The presiding judge shall retain in his custody one copy of the returns and one copy of the poll list of the election, and shall keep the same for sixty days after the day of the election, subject to the inspection of anyone interested in such election.

(b) In precincts using voting machines. In all general, special, and primary elections, there shall be made out, for each precinct in which voting machines are used, three copies of the poll list and three copies of the returns. These records shall be distributed and preserved as provided in Paragraphs (1), (2), and (4) of Subdivision (a) of this section, and shall be subject to the provisions of Subdivision (c) of this section.

(c) Destruction of records. In event of any contest or criminal investigation growing out of an election within sixty days after the day of the election any officer having custody of records of the election shall deliver such records to any competent officer having process therefor, for any tribunal or authority authorized by law to demand them. If no contest or criminal investigation arose within sixty days after the day of the election, the records referred to in Paragraphs (1), (2), and (4) of Subdivision (a) of this section may be destroyed after the expiration of the sixty-day period; provided, however, that no record shall be destroyed until all laws providing for recordation of any information contained therein have been complied with; and provided further, that the district judge, upon his own motion, or upon the request of the county or district attorney, may, by an order entered on the minutes of the district court, defer the destruction of any election record for such period as he deems necessary, subject to further orders of the court. The records referred to in Paragraph (3) of Subdivision (a) of this section, which are placed in the ballot box containing the voted ballots, shall be destroyed at the same time that the voted ballots are destroyed, as provided elsewhere in this Code.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 68.]

#### Art. 8.30. Time for Report by Election Judges

The presiding judges in the several precincts in this state, in general and special elections, shall deliver the written returns of the election to the

county judge of their respective counties immediately after all votes have been counted and tabulated, and not later than twenty-four hours after the closing of the polls. Within forty-eight hours after the returns have been canvassed by the commissioners court, as provided by law, the county judges shall forward by mail to the Secretary of State complete returns of the general and special elections in their respective counties. If a county judge fails or neglects to make such report the county clerk is hereby authorized to forward by mail to the Secretary of State complete returns of the general and special elections in their respective counties and if both the county judge and the county clerk neglect or fail to make such report, it shall be the duty of the Secretary of State to request by mail, telephone or telegraph that the report be forwarded to him immediately. In case no report is had from such county within ten days from the day of the election, it shall be the duty of the Secretary of State to send a special messenger to such county to obtain from the proper officers a complete return of such election, and the expense of such messenger shall be paid from the general fund of such county. This section shall in no wise be construed as repealing Section 122 of this Code.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 112; Acts 1963, 58th Leg., p. 1017, ch. 424, § 69.]

<sup>1</sup>Article 8.40.

#### Art. 8.31. Return of Election Supplies

The presiding judge shall deliver the certified lists of qualified voters and all stationery, rubber stamps, blank forms, and other election supplies not used, to the county clerk at the same time that he delivers the returns of the election, and not later than twenty-four hours after the closing of the polls. He shall provide for the safe storage of the voting booths in some place and notify the county clerk.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 113; Acts 1963, 58th Leg., p. 1017, ch. 424, § 70.]

#### Art. 8.32. Ballots and Copy of Returns Delivered to County Clerk

Immediately after the counting of the ballots is completed, the presiding judge shall place all the ballots voted, together with one copy of the returns, poll list, and tally list, into a wooden or metallic box or any approved ballot box, and shall securely fasten the box with nails, screws, or locks, and he shall immediately, and in no case later than 24 hours after the closing of the polls, deliver the box to the county clerk of his county. He shall deliver the key or keys to the sheriff, who shall keep the same for 30 days. It shall be the duty of the county clerk to keep the box securely, and it shall be unlawful for the county clerk or anyone else to burn or otherwise destroy these ballots and records, or permit it to be done, except where provided for by the law; and anyone violating this provision of this section upon conviction shall be fined not to exceed \$1,000. Also, the presiding judge shall deliver a copy of the returns, together with a copy of the poll list and tally list, to

the county clerk at the same time that he delivers that ballot box, and the clerk shall immediately announce the returns of the election in the precinct reporting, and shall post the returns on a bulletin board within his office. In event of any contest or criminal investigation growing out of the election within 60 days after the day of the election, the county clerk shall deliver the ballot box to any competent officer having process therefor, for any tribunal or authority authorized by law to demand such box. If no contest or criminal investigation arose out of the election within 60 days after the day of such election, the clerk shall destroy the contents of the ballot box by burning or shredding same; provided, that the district judge, upon his own motion or upon the request of the county or district attorney, may, by an order entered on the minutes of the district court, defer the destruction of the contents of the ballot box for such period as he deems necessary, subject to further orders of the court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 114; Acts 1963, 58th Leg., p. 1017, ch. 424, § 71; Acts 1967, 60th Leg., p. 1902, ch. 723, § 35, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 26, eff. Sept. 1, 1969.]

**Art. 8.33. Repealed by Act 1963, 58th Leg., p. 1077, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 8.34. Commissioners to Open Returns**

On the Monday next following the day of election or sooner, the Commissioners Court shall open the election returns and canvass the result, recording the state of the polls in each precinct in a book to be kept for that purpose; provided, that, in the event of a failure from any cause of the Commissioners Court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 116.]

**Art. 8.35. Returns Not Canvassed**

No election returns shall be opened or canvassed unless the same have been returned in accordance with the provisions of this Code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 117.]

**Art. 8.36. Certificates of Election**

After the canvass of the result of the election has been made, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him, and the day on which such election was held, and shall sign the same and cause the seal of the county court to be impressed thereon.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 118; Acts 1963, 58th Leg., p. 1017, ch. 424, § 72.]

**Art. 8.37. Returns for State and District Officers**

In all elections for state or district officers, including presidential electors, or for voting on proposed amendments to the constitution, the county clerk shall, within 48 hours after the commissioners court has opened the returns and canvassed the result, as provided in Section 116,<sup>1</sup> certify and transmit returns of the election to the seat of government of the state, sealed in an envelope directed to the secretary of state and endorsed "Election Returns for \_\_\_\_\_ County, for \_\_\_\_\_" (filling the first blank with the name of the county and the other blank with the designation of the election). The secretary of state shall prescribe the necessary forms and instructions for the use and guidance of the county clerk in forwarding the returns under this section and Section 122.<sup>2</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 119; Acts 1967, 60th Leg., p. 1157, ch. 514, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 27, eff. Sept. 1, 1969.]

<sup>1</sup> Article 8.34.

<sup>2</sup> Article 8.40.

**Art. 8.38. Such Returns Counted**

On the seventeenth day after the election, the day of election excluded, and not before, the Secretary of State in the presence of the Governor and one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, or in case of vacancy or of inability or failure of either to act, then in the presence of either one (1) of them, shall open and count the returns of the elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 120; Acts 1963, 58th Leg., p. 1138, ch. 442, § 13.]

**Art. 8.39. Governor to Give Certificate**

When the returns have been counted, the Governor shall immediately make out, sign and deliver a certificate of election, with the seal of the State thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 121.]

**Art. 8.40. Returns for Governor and Lieutenant Governor**

Each county clerk shall promptly certify and transmit returns of the election for governor and lieutenant governor to the seat of government of the state, sealed in an envelope directed to the speaker of the House of Representatives in care of the secretary of state and endorsed as provided in Section 119.<sup>1</sup> The secretary of state shall keep the returns, with the seal of the envelope to remain unbroken, until the organization of the next Legislature, when he shall, on the first day thereof, deliver them to the speaker of the House of Representatives.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 122; Acts 1969, 61st Leg., p. 2662, ch. 878, § 28, eff. Sept. 1, 1969.]

<sup>1</sup> Article 8.37.

**Saved From Repeal**

*Article 8.30, requiring election judges to deliver written returns to the county judges immediately after all votes have been counted and tabulated, provides in the last sentence that it should in no wise be construed as repealing this article.*

**Art. 8.41. Repealed by Acts 1967, 60th Leg., p. 1158, ch. 514, § 2, eff. Aug. 28, 1967**

See, now, art. 8.37.

**Art. 8.42. Returns for Members of the Legislature in Special Elections**

Whenever a special election is held in any representative or senatorial district in this State for the election of any Member of the Legislature, the returns shall be canvassed and the results declared in accordance with Article 32c of this Code.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 124; Acts 1963, 58th Leg., p. 1017, ch. 424, § 74; Acts 1965, 59th Leg., p. 777, ch. 368, § 2.]

<sup>1</sup> Article 4.12.

**Art. 8.43. County Clerk to Certify to Secretary of State**

On or immediately after January 1, next following a general election, each county clerk shall make out and certify to the Secretary of State a tabular statement showing who were elected, and to what office and the date of qualification, and giving the number of the precinct officers; together with the statutory fees, for issuance of each commission.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 125; Acts 1967, 60th Leg., p. 1902, ch. 723, § 36, eff. Aug. 28, 1967.]

**Art. 8.43a. Precinct Returns Forwarded to Secretary of State**

Subd. 1. Within 70 days after each general election, and within 30 days after each special election at which a statewide office is voted on, the county clerk shall forward to the Secretary of State a report of the number of votes cast for each candidate for a statewide office in each precinct of the county. In a presidential election year the report shall include the votes cast for each party's candidates for president and vice-president. The report may be in the form of either transcribed or photographic copies of the precinct returns for the statewide offices as made by the presiding judges of the election, or in the form of a tabulated statement compiled from the official canvass by the Commissioners Court, or in such other form as the Secretary of State approves for reporting the information to him.

Subd. 2. The Secretary of State shall preserve all information received under the provisions of Subdivision 1 of this section as public records of his office, either in the form in which the information is reported to him or in the form of a tabulated statement prepared by him from the reports received from the county clerk, for a period of 10 years, after which time he may transfer the records to the

records management division of the State Library for further retention for a period of 20 years. At the expiration of 30 years from the date of the election, the State Librarian may dispose of the records in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

Where the Secretary of State prepares a tabulated statement from reports furnished to him by the county clerk, he shall preserve the reports for a period of two years, after which time he may transfer them to the records management division of the State Library, and the State Librarian may dispose of them in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

[Acts 1971, 62nd Leg., p. 47, ch. 24, § 2, eff. March 18, 1971.]

**Art. 8.44. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 8.45. Commission to Officers**

The Governor shall commission all officers except Governor, members of Congress, electors for President and Vice-President, of the United States, members of the Legislature and municipal officers.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 127.]

**Art. 8.46. Death of Governor-elect or Death or Incapacity of Governor-elect and Lieutenant Governor-elect**

Pursuant to the provisions as set forth in House Joint Resolution No. 7 [Const. art. IV, § 3a] which was approved and passed by the people of the State of Texas on November 2, 1948, and thereby becoming a part of the Constitution of the State of Texas, the successor to the office of Governor shall be as follows:

If, at the time the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, the person receiving the highest number of votes for the office of Governor, as declared by the Speaker, has died, then the person having the highest number of votes for the office of Lieutenant Governor shall act as Governor until after the next general election.

It is further provided that in the event that both the Governor-elect and the Lieutenant Governor-elect die or have become permanently incapacitated to take their oaths of office at the time when the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, and the Legislature finds that neither the Governor-elect nor the Lieutenant Governor-elect are able to take the oath of office and fulfill the duties thereof, then the Speaker of the House of Representatives and the President pro tem of the Senate will call a joint session of the House of Representatives and Senate for the purpose of electing a Governor and Lieutenant Governor.

The person receiving the highest number of votes cast by the Members of the Legislature for the office of Governor shall become the Governor and hold that office for the constitutional term of two (2) years. The person receiving the highest number of votes for the office of Lieutenant Governor cast by the Members of the Legislature, shall become Lieutenant Governor and hold that office for the constitutional term of two (2) years.  
[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 128.]

## CHAPTER NINE. CONTESTING ELECTIONS

### Article

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### Art. 9.01. District Court, Jurisdiction and Venue

The district court shall have original and exclusive jurisdiction of all contests of elections, general or special, for all school, municipal, precinct, county, district, state offices, or federal offices, except elections for the offices of Governor, Lieutenant Governor, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Attorney General, and Members of the Legislature.

The venue of suits or contests between candidates for any office to be filled by the choice of voters of the entire state shall be in Travis County. The venue of suits or contests between candidates for any justice of any Court of Civil Appeals shall be in the county where said Court of Civil Appeals has its sittings.

The venue in all other election contests between candidates shall be in the county where the candidate receiving the certificate of election resides. If there is but one district court in the county in which venue is placed by this law and the judge of said court is disqualified to hear any contest, said judge shall be replaced for purposes of said contest in the manner provided by law for civil suits.

Nothing herein shall be construed to prohibit the district court in the county where any such contest may be filed from changing the venue to some adjacent county, upon showing of adequate cause.  
[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 129.]

### Art. 9.02. Contest or Prosecution by Attorney General

(1) In any special, general, or primary election in this State for any office, national, state, district, county, precinct, school, or municipal, or any election on any proposition, the Attorney General of Texas, in the case of elections involving two (2) or more counties, and the district and county attorneys, in the case of elections involving less than two (2) counties, may on their own motion, and shall when allegations of election frauds are presented to them by written affidavit of two (2) or more reputable citizens, investigate the conduct of such election and the making, canvassing, and reporting of returns. To make effective the power of such officers to investigate, the Attorney General, in elections involving two (2) or more counties, and the district and county attorneys in all other elections, are hereby authorized to impound all of the election records in the hands of any county clerk, district clerk, or any other election official by applying for and obtaining an order of a district court placing such records in the custody of the court to be examined by such officers in the presence of the district judge or a grand jury. All of such records, except the stub box, shall be subject to inspection and examination by the attorneys for the State in the cases hereby placed within their respective jurisdictions. The stub box containing identification of the individual voters shall not be opened or inspected by anyone except as otherwise provided in this Act with reference to election contests and in a grand jury room when alleged violations involve the contents of said box.

The application for impoundment and inspection of records shall be filed with the district court of a county in which the election was held, or an adjoining county, or Travis County in the case of statewide elections, and the judge of said court shall immediately issue an order impounding such records in a vault or other secure place under such terms and conditions as will keep the records under his custody and control during the entire examination and inspection proceeding and for such additional time as he may direct. The ex parte proceeding herein provided for inspection in the presence of the judge shall be conducted in the usual manner as a court of inquiry, and the court shall issue such processes for

witnesses and records relevant to the conduct of such election as may be requested by the appropriate attorney for the State, and disregard of subpoenas or other processes or refusal to testify at such hearing shall be punished by the court as in civil cases.

(2) The summary court proceeding and venue set out in subsection (1) above may be followed in the investigation and development of evidence relating to all other alleged violations of the Texas election laws. The Attorney General of Texas is hereby authorized to appear before a grand jury and prosecute any violation of the election laws of this State by any candidate, election official, or any other person, in state-wide elections, or elections involving two (2) or more counties. He may institute and maintain such prosecution alone or in conjunction with the county or district attorney of the county where such prosecution is instituted. He may call upon and direct county and district attorneys to handle the investigations and prosecutions provided for above or to assist him in such procedures. This Section is intended to be cumulative and in addition to all other prosecutions authorized by other Sections hereof and other statutes. Concurrent venue for indictments and prosecutions under this Section shall be in the county where the election law violation occurred, or an adjoining county, or in Travis County if the violation involves or relates to a state-wide election for any State or national office or any proposition submitted to the people.

(3) Any subpoena or subpoena duces tecum issued by the clerk of any district court for any hearing, election contest, or election law violation shall be effective if served anywhere within this State, provided, however, no witness shall be punished for failure to comply with such subpoena or subpoena duces tecum unless the fees provided by law are tendered him as required by statute or court rule. When called upon by the Attorney General, the Department of Public Safety and Texas Rangers shall serve any subpoenas and assist in any investigations which may be necessary.

(4) The expense of any investigation on the part of the Attorney General of an election law violation shall be paid by the State of Texas. There is hereby appropriated for the biennium of 1951-52 the sum of Five Thousand Dollars (\$5,000) out of funds not otherwise appropriated from which such expenses may be paid.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 130.]

#### Art. 9.03. Notice of Contest

Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty (30) days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 131.]

#### Art. 9.04. Reply to Notice of Contest

The person holding such certificate shall, within ten (10) days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 132.]

#### Art. 9.05. Service of Notice

The notice, statement and reply required by the two preceding articles may and shall be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen (16) years at the usual place of abode or business of such person.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 133.]

#### Art. 9.06. Where to File Papers

If the contest be for the validity of an election for any State office, except the offices provided for in Section 155 [art. 9.27], or for any district office, except Members of the Legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 134.]

#### Art. 9.07. Cause to Have Precedence

When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. If the office contested for be that of district clerk, then a clerk pro tem shall be appointed as is provided by law in suits where the clerk is a party to the suit.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 135.]

#### Art. 9.08. Evidence and Procedure

In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases. As to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 136.]

#### Art. 9.09. To Execute Bond

Whenever the validity of any election for an officer other than for Members of the Legislature is contested, the contestee shall, within twenty (20) days after the service of said notice and statement of such contest upon him, file with the clerk of the court in which such contest is pending a bond with two (2) or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or

both, as the case may be, to be realized from the office being contested for a period of two (2) years; conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 137.]

#### Art. 9.10. Failure to File Bond

If the contestee fails to file the bond as required in the preceding Section [art. 9.09], and within the time therein prescribed, said clerk shall notify the contestant immediately of such failure; and such contestant shall have the right within ten (10) days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 138.]

#### Art. 9.11. Execution of Bond by Contestant Certified

Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the Governor, that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 139.]

#### Art. 9.12. To Commission Contestant

Upon receiving such certificate from the clerk, the Governor shall issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof unless it shall otherwise be determined and ordered by the court upon the trial of such contest.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 140.]

#### Art. 9.13. Failure of Contestant to Execute Bond

The Governor shall issue the commission to the contestee at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by Section 137 [art. 9.09], in which event the Governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in Section 138 [art. 9.10], and within the time therein required, the clerk shall certify all the facts in the case, under his official seal to the Governor, who shall thereupon issue the commission to the contestee.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 141.]

#### Art. 9.14. Fraudulent Vote Not Counted

If any vote or votes are found upon the trial of any contested election to be illegal or fraudulent, the trial court shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 142.]

#### Art. 9.15. Election Declared Void

If it appears on the trial of any contest provided for in Section 134 [art. 9.06] that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or managers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 143.]

#### Art. 9.16. Bonds Subject to Suit

The bonds required to be filed by the contestant and contestee under the provisions of this chapter [arts. 9.01-9.38] shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 144.]

#### Art. 9.17. Appeal Available

Either the contestant or contestee may appeal from the judgment of the district court to the Court of Civil Appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the Court of Civil Appeals over all other cases. In cases of appeal as provided for in this Section [this article], the clerk shall, without delay, make up the transcript and forward the same to the clerk of the Court of Civil Appeals for that district.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 145.]

#### Art. 9.18. Taxing Costs

The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 146.]

#### Art. 9.19. Measure of Damages

Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office

under the provisions of this chapter [arts. 9.01–9.38], the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided that he shall have acted in good faith in receiving the certificate of election or commission for the office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 147.]

### Art. 9.20. For Legislature

#### Initiation of Election Contest

Sec. 1. A candidate for State Senator or Representative may initiate election contest proceedings at any time after the returns have been deposited in the office of the county clerk of every county comprising the district as provided in Articles 119, 123, and 124 of this code, but not later than 30 days after the date of the election.

#### Notice and Statement

Sec. 2. The contestant initiates election contest proceedings by giving notice in writing to the candidate who is shown by the returns to have the greatest number of votes when the returns of all counties are totaled, and by delivering to him, his agent or attorney, a written statement of the grounds on which the election is contested. Within the same period of time, the contestant shall mail a certified copy of the notice and statement to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

#### Reply

Sec. 3. The candidate who receives the notice and statement shall cause a reply in writing to be delivered to the contestant, his agent or attorney, within 10 days after receiving the notice and statement; and within the same period of time he shall mail a certified copy of the reply to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

#### Service; Use of Certified Mail

Sec. 4. (a) The notice, statement, and reply may be served as provided in Article 133 of this code, or by certified mail with return receipt requested.

(b) When certified mail is used for service or to transmit a copy of the notice, statement, or reply to the Secretary of State, the fact and date of sending and the fact and date of receipt may be proven with window receipts and return receipts for certified mail.

#### Duty of Secretary of State

Sec. 5. (a) If the contest involves the result of a general election, the Secretary of State shall submit the papers of the case to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, on the second Tuesday in January following the election. The papers of the case consist of the copies of the notice, statement, reply, and the Secretary of State's certified statement of the total votes cast for each candidate for the office as shown by the official canvass of the returns.

(b) If the contest involves the result of a special election, and the Legislature is not in session when he receives the notice, statement, and reply, the Secretary of State shall submit the papers on the opening day of the first legislative session to be convened after the date of the election; and if the Legislature is in session when he receives the notice, statement, or reply, he shall submit the papers within three days after the day he receives the copy of the reply.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 148; Acts 1965, 59th Leg., p. 199, ch. 83, § 2.]

### Art. 9.21. Depositions Taken

At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom the same will be answered as well as the time and place of taking such testimony. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 149.]

### Art. 9.22. Who May Take such Depositions

Any officer authorized by the law of this State to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories and take his or their answers in writing and under oath to such interrogatories and cross interrogatories as may be propounded in writing. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 150.]

### Art. 9.23. How Depositions May be Returned

The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness before the officer taking the same, and shall be certified to by such officer and sealed in an envelope; and the name of said officer shall be written by him across the seals; and he shall forward the same without delay by mail or other safe conveyance to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, at the seat of government.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 151.]

**Art. 9.24. Referred to Committee**

The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the Legislature be opened by the President of the Senate or by the Speaker of the House of Representatives, as the case may be; and the same shall be referred to the committee on privileges and elections of the House in which the contest is pending, which committee shall proceed without delay to fix a time for the hearing of said case, and, after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the House by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 152.]

**Art. 9.25. Hearing by Committee**

The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this State shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairman of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee and such process shall be executed by the sergeant-at-arms of the House in which the contest is pending, or by such other person as the presiding officer of said House may designate.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 153.]

**Art. 9.26. Procedure by House**

The House in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said House may hold the election void after full consideration of all the evidence and for the reasons prescribed in Section 143 [art. 9.15] and in such case the Governor shall at once be notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the House in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 154.]

**Art. 9.27. Contest for State Office**

If the contest be for the validity of any election for Governor, Lieutenant Governor, Comptroller, State Treasurer, Land Commissioner or Attorney General, the same shall be tried and determined by both Houses of the Legislature in joint session, and the provisions of this chapter [arts. 9.01-9.38] governing in case of a contest for the validity of an election for members of the Legislature shall apply to and govern in a contest for the office above named, as far as applicable.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 155.]

**Art. 9.28. United States Senator**

If the nomination of any candidates for United States Senator be contested, the same shall be conducted under the provisions of the law regulating contests for Governor.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 156.]

**Art. 9.29. For Presidential Electors**

Any person intending to contest the election of any or all of the persons duly declared elected as electors of president and vice-president, shall within ten (10) days from the said fourth Monday in November, file with the Secretary of State a written statement of the ground on which such contestant relies to sustain such contest, and shall within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within eight (8) days after receiving such notice, file with the Secretary of State his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the State Board of Canvassers, consisting of the Governor, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and Secretary of State, or any two (2) of them; and their decision shall be rendered at least two (2) days before the time fixed by law for the meetings of the electors. Such decision, in which two (2) at least of such Board shall join, shall be final, and certificates of election, in accordance therewith shall at once be issued by the Secretary of State to the proper parties. Where not otherwise herein provided, the provisions of law relating to contests for the validity of an election for members of the Legislature shall apply to such contests for presidential electors.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 157; Acts 1963, 58th Leg., p. 1138, ch. 442, § 14.]

**Art. 9.30. Other Contested Elections**

If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town, or village, any resident of such county, precinct, city, town, or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under

the same rules, as far as applicable, as are prescribed in this chapter [arts. 9.01-9.38] for contesting the validity of an election for a county office. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 158.]

#### Art. 9.31. Parties Defendant

In any case provided for in the preceding Section [art. 9.30], the county attorney of the county, or if there is no county attorney, the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town, or village which they may represent, nor shall such contestee be required to give bond upon an appeal. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 159.]

#### Art. 9.32. Constitutional Amendment

Within sixty (60) days from the date of any election upon any proposed amendment to the Constitution, and not thereafter, any citizen of this State who is a qualified voter, shall have the right to contest said election by filing his petition in a district court of Travis County, fully stating his grounds for contest, naming the Secretary of State as contestee; and thereupon the district judge, in whose court the contest is filed, shall make an order for the issuance, and the clerk of said court or the judge thereof, shall issue a writ of injunction enjoining the Secretary of State from tabulating, estimating or canvassing the returns of said election and from ascertaining or declaring the result of said election until said contest is finally determined. Citation shall be issued and served upon the Secretary of State as in other Civil cases. At the time of filing such petition, contestant shall cause to be published in a daily newspaper printed in Texas, for at least ten (10) days before appearance day, a brief notice to all parties interested that such suit has been filed. The Secretary of State shall within twenty (20) days from service of citation file a formal answer but shall not be liable for any costs. Any qualified citizen or citizens adversely interested in such contest may appear by counsel of their own choosing upon either side of the contest, but opponents of the contest shall have the right to direct and control the pleadings of the Secretary of State and the conduct of the contest upon the part of the contestees; and contestants shall jointly and not severally plead in the cases. The said court shall cause the party contesting the result of said election and the parties adversely interested to form issues and shall as near as may be conform the hearing and determination of such contest to the proceedings usual in courts in contested election cases. The court shall permit contestants to amend their petition, include therein allegations charging fraud, irregularities or mistakes, upon such terms as to the court may seem just, and likewise the contestees shall have the right

both to contest the charges made by the contestant and to make counter charges, but the court shall bring the parties to issue with all possible dispatch.

Said contestant shall be required to give a good and sufficient bond to be approved by the clerk of the court wherein said contest is filed, conditioned that the said contestant will pay, in the event he is defeated in said contest, all the costs that may be incurred in the trial of said contest. He shall not be permitted to file any such contest and give in lieu of the bond herein provided for any affidavit of inability to pay the costs as provided for by law. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 160.]

#### Art. 9.33. Power of Court

The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities used in connection with said election that may be necessary or proper to determine the issues raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest. The said court may proceed to the trial of said issue raised by said contest after having given the contestants and the contestees full and fair opportunity to produce before said court the evidence upon such issues. The court may adjourn the said hearing from time to time and may, before the final determination of said cause, make such orders and decrees as to the court may seem just and proper, requiring any election officers to make such certificate of the result of such election as in the judgment of the court such officers should have made in making the returns of such election. Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of the question whether a majority of the legal votes cast in said election, either in favor of or against said proposed amendment, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 161.]

#### Art. 9.34. To Compel Returns

The said court shall have full authority when the result of such election in any voting precinct box

shall have been ascertained and determined, to order and compel the proper officers thereof to make true and correct returns of such election in such voting box as finally determined by said court, to the proper officers of such county and when the result in any county shall have been ascertained and determined by said court, to order and compel the proper returning officers of such county to make true and correct returns of the result of said election in said county as to said amendment as ascertained by said court to the Secretary of State, and to order the Secretary of State to make his returns, tabulations, canvassings, countings and certificates in accordance with the result of such election as finally ascertained and determined by the court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 162.]

#### Art. 9.35. Decree

The said contest shall have precedence in said court over all causes pending therein. Either party may appeal as in other civil cases and the same shall have precedence over all other causes pending in the appellate courts to which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the Constitution of this State. Upon final judgment in said appellate court, it shall enter a decree ordering and directing the Secretary of State to declare the true result of said election as judicially determined and ascertained by said court, and the Secretary of State shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgment of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgment of said court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 163.]

#### Art. 9.36. Result Final

The result of said contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding. If no contest of said election is filed and prosecuted in the manner and within the time herein provided for, it shall be conclusively presumed that said election as held and the result thereof as declared are in all respects valid and binding upon all courts, provided, that pending such contest the enforcement of all laws in relation to the subject matter of such contest shall not be suspended, but shall remain in full force and effect.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 164.]

#### Art. 9.37. To Examine the Ballots

At any time when the grand jury is making an investigation of any criminal violation of the election laws, and finds probable cause, a request may be made to a district judge of that county for an order directed to the County Clerk to permit the grand jury to examine the ballot box and ballots therein in so far as may be necessary to determine the issue at

stake. Such order may be issued by the district judge in his sound discretion. In that case, the grand jury shall make such examination in secret before a quorum of the grand jury and only then; when such examination is complete the boxes shall be relocked and returned to the custody of the County Clerk.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 165.]

#### Art. 9.38. Best Evidence

In case the ballots or ballot have been illegally destroyed before the time allowed by the law for their destruction, a person in a court of law may testify as to how he voted in any primary or election in this State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 166.]

#### Art. 9.38a. Recount of Paper Ballots

##### Grounds for Recount

Subd. 1. (a) A candidate for nomination or election to any public office or to the party office of county chairman or precinct committeeman may obtain a recount of the votes cast for the office on manually counted paper ballots, in the manner outlined in this section:

(1) if the difference in the number of votes received by him and the next highest candidate above him is less than five percent of the number of votes received by such next highest candidate, as shown by the returns of the election officers, and the candidate seeking the recount would gain the election or nomination or a place on a runoff election ballot if the recount showed him to have received a greater number of votes than that opponent, or

(2) if one or more judges of the election make an uncontradicted affidavit stating that certain ballots cast for the office were counted or were not counted, as the case may be, and the Secretary of State certifies that, on the basis of the statements in the affidavit, the election officers were in error in either counting or failing to count the ballots, as the case may be, and further certifies that from the affidavit or affidavits submitted to him and on the basis of the unofficial returns it appears likely that the number of miscounted ballots were of sufficient number to change the result of the election in that race as it affects the candidate seeking the recount.

(b) If the ground of the application for a recount is that the difference in votes is less than five percent, the request must be for a recount of all the ballots cast for the office in each and every election precinct, including the absentee ballots cast for the office; and the canvassing board shall order a complete recount.

(c) If the ground of the application is that election officers erroneously counted or failed to count certain ballots, the candidate at his option may request

a recount of all the ballots cast in the election or only the ballots cast in the election precincts in which the miscounting is alleged to have occurred; and if only a partial recount is requested, the canvassing board shall order a recount only of all the ballots cast in those precincts in which the Secretary of State certifies that ballots were erroneously counted or not counted.

Procedure for Requesting Recount; General Provisions

Subd. 2. (a) A candidate desiring a recount must file a written, signed application with the presiding officer of the body which canvasses the returns of the election and makes the official declaration of the result (hereinafter called "canvassing board"). The application may be presented for filing at any time after the returns from all election precincts involved have been received from the presiding judges of the election, and it must be presented not later than the second day after the official declaration of the result; provided, however, that if the application is for a partial recount in any election wherein the unofficial returns show that a runoff election for the office involved will be necessary or wherein a runoff would be necessary if the recount changed the result of the election, the application must be filed not later than the fifth day after the day of the election. If the chairman of a state executive committee receives an application under the first ground stated in Subdivision 1 of this section, or receives the certification for a recount from the Secretary of State upon an application filed under the second ground, more than three days before the next scheduled meeting of the state committee, he may direct the county executive committee in each county involved to conduct the recount and to report the result to the state committee; and if the application is for a recount in a first primary election, which recount might affect a runoff election in the second primary, in the stated circumstances the state chairman shall direct the county committee in each county involved to proceed immediately with the recount.

(b) In addition to other requirements stated in this section, each application must show the name and address of each opposing candidate, and the name and address of the presiding judge of each election precinct for which a recount is requested. On the same day that a candidate delivers or mails his application to the presiding officer of the canvassing board, he must deliver in person or mail by certified or registered mail, with return receipt requested, a copy of the application and any supporting papers to each opposing candidate at the election.

Procedure Where Ground for Recount is Alleged Error in Counting or Failing to Count Ballots

Subd. 3. A candidate requesting a recount under the second ground stated in Subdivision 1 of this section must attach to his application a supporting affidavit or affidavits showing that the conditions for requesting the recount are met. On the same

day that he delivers or mails his application to the presiding officer of the canvassing board, he must deliver or mail a copy of the application, together with a copy of each supporting affidavit, executed as an original, to the Secretary of State with the request that the Secretary of State make the certification described in Subdivision 4 of this section. Any opposing candidate shall be entitled to file with the Secretary of State a controverting affidavit or affidavits in denial of statements made in the supporting papers filed by the candidate requesting the recount, within three days after the date on which the application was delivered in person or mailed to him.

Action by Secretary of State on Request for Certification

Subd. 4. Not sooner than three days nor later than five days after receipt of a request for certification under Subdivision 3 of this section, the Secretary of State shall consider the request and take action thereon. If from uncontroverted statements in the supporting papers it clearly appears, on the basis of the statutes and court decisions of this state, that the election officers were in error in counting or failing to count certain ballots and that the error likely affected the outcome of the race, he shall so certify. If the facts alleged fail to show a clear case of error or raise an unresolved legal question as to whether an error was committed with respect to certain ballots, the Secretary of State shall so find, and he shall not undertake to make a ruling on disputed facts or unresolved legal questions. Within the time stated above, the Secretary of State shall certify his findings and conclusions to the candidate making the request, with a copy to the presiding officer of the canvassing board and to each opposing candidate.

Deposit to Cover Costs of Recount

Subd. 5. A candidate requesting a recount shall deposit with the presiding officer of the canvassing board either cash, a cashier's check, a certified check, or a surety bond of an authorized corporate surety, in the amount of ten dollars for each election precinct in which a recount is to be made pursuant to his request, or in the amount of fifty dollars, whichever amount is the greater. If the application is filed under the first ground stated in Subdivision 1 of this section, the deposit must accompany the application; if the application is filed under the second ground, the deposit must be made within three days after the date on which the Secretary of State certifies that error which likely affected the outcome of the race was committed in one or more of the election precincts. For the purpose of this section, absentee ballots counted by a special board of election officers constitute ballots for a separate election precinct.

Right of Opposing Candidate to Obtain Full Recount

Subd. 6. If a candidate is granted a partial recount under Subdivisions 3 and 4 of this section, any

opposing candidate may obtain a recount of all ballots in all precincts by filing a request for a full recount with the chairman of the canvassing board within three days after the date on which the Secretary of State makes his certification, and by accompanying the request with either cash, a cashier's check, a certified check, or a surety bond of an authorized corporation surety, in the amount of ten dollars for each additional election precinct for which a recount will be made as a result of his request. On the same day that he delivers or mails his request, the opposing candidate must deliver in person or mail by registered or certified mail, with return receipt requested, a copy of the request to the original applicant. Within two days thereafter, the original applicant must make a similar deposit covering the additional precincts to be recounted.

#### Procedure for Ordering Recount

Subd. 7. (a) Where a candidate has complied with all conditions for obtaining a recount, as soon as practicable the canvassing board conducting the recount shall set a date on which the recount is to begin and shall notify by mail each opposing candidate of the place or places where the recount will be conducted and the exact time when it will begin. The time for commencing the recount shall not be sooner than two days nor later than four days after the date of the notification. The recount shall be conducted in the office of the officer having custody of the voted ballots, who shall be entitled to be present or to have a representative designated by him present while the recount is in progress.

(b) The canvassing board shall appoint a committee of three disinterested registered voters of the political subdivision in which the ballots were cast, who shall make the recount. The board shall designate one member of the recount committee to serve as its chairman. Where ballots to be recounted are in the custody of different officers at more than one location, a committee shall be appointed for each location. No person who served as an election judge, clerk, or watcher in any precinct for which ballots are to be recounted shall be eligible for appointment to a recount committee. The committee shall permit any affected candidate or one person authorized in writing by such candidate to be present to watch the recount, to inspect the ballots, to observe the tallying of the votes, and to observe all other actions of the committee in connection with the recount.

#### Procedure for Making the Recount

Subd. 8. (a) The canvassing board shall issue an order to the officer having custody of the voted ballots, stating the names of the recount committee and the time at which the recount is to begin, and directing him to deliver to the chairman of the committee the ballot box or boxes containing the ballots to be recounted. A similar order for delivery of the keys to the ballot boxes shall be issued to the

officer having custody of the keys. A copy of each order shall be delivered to the chairman of the committee, who shall present it, as proof of his identity, to the officer named in the order.

(b) The committee shall proceed to make the recount as directed, working for at least seven hours each day on every day that is not a Sunday or a legal holiday until the recount is completed. During the time that the recount is not actually in progress, the ballot boxes shall be relocked and returned to the custody of the officer who delivered them to the committee, and the keys shall be retained in the custody of the chairman of the committee.

(c) After the recount is completed, the committee shall make out its report and deliver it to the presiding officer of the canvassing board. The chairman of the committee shall deliver the locked ballot boxes with the original contents intact and the ballot box keys to the respective officers who originally had custody of the boxes and the keys.

#### Action by Canvassing Board Following Recount

Subd. 9. As soon as practicable, and not later than two days after receiving all the committee reports, the presiding officer of the canvassing board shall convene the board, which at such meeting shall declare the result of the election for the office involved on the basis of the revised returns. The board and its presiding officer shall take such further actions as may be necessary in the same manner as for an original canvass.

#### Costs of Recount

Subd. 10. (a) The members of the recount committee shall be paid an amount to be fixed by the canvassing board, but not to exceed the maximum hourly rate payable to election judges and clerks, which shall be charged as costs. Expenses incurred by the canvassing board or its chairman in giving the notices required by this section shall also be charged as costs.

(b) If the recount shows that the applicant received a greater number of votes than shown by the returns of the election judges, and if as a result of the recount the applicant is declared to have been nominated or elected to the office, or to have become entitled to be a candidate in a runoff election, or to have tied with another candidate between the two of whom the right of nomination, election, or a place on a runoff ballot is to be decided, the cost of the recount shall be paid by the authority charged with the duty of paying the expenses of the election for which the recount was made, and the amount deposited by the applicant shall be returned to him; provided, however, that if the original application was for a partial recount and the results of the election would have been changed in either of the foregoing manners on the basis of the partial recount only, the costs of the recount in additional precincts as the result of a request by an opposing candidate for a full recount shall be borne by the

opposing candidate making the request. Otherwise, the cost of the recount shall be paid by the applicant, and any amount remaining from the deposit shall be returned to him. Any costs over the amount of the deposit shall be paid by the applicant if he is charged with the cost of the recount; and any costs of a recount in additional precincts over the amount of the deposit made by the opposing candidate requesting the full recount shall be paid by such candidate if he is charged with the costs in those precincts.

Application for a Full Recount Following a Partial Recount

Subd. 11. (a) Whenever there has been only a partial recount in which less than fifty percent of the total votes cast for the office, as shown by the original returns, were recounted, and as a result of the partial recount the number of votes received by any candidate is changed in such a manner that he would be entitled to request a recount under the first ground stated in Subdivision 1 of this section, but he had not been entitled to a recount on that ground on the basis of the original returns, he may obtain a recount in all additional precincts by following the procedure outlined in this subdivision.

(b) Whenever there has been a partial recount of more than fifty percent but less than seventy-five percent of the total votes cast, any candidate may obtain a recount in all additional precincts if he was not entitled to a recount on the first ground on the basis of the original returns, but as a result of the recount the difference in the number of votes received by him and the next highest candidate above him is less than two percent of the number of votes received by such next highest candidate, as shown by the revised returns, and he would gain the election or nomination or a place on a runoff election ballot if the full recount showed him to have received a greater number of votes than that opponent.

(c) An application under this subdivision for a recount in all additional precincts shall be made in the same manner and shall be treated in all other respects as an original application for a full recount, except that it covers only the additional precincts. The application may be made at any time after every recount committee involved in the partial recount has made its report, and must be filed not later than the second day after the canvassing board declares the result of the election on the basis of the revised returns following the partial recount. If as a result of the recount in the additional precincts the applicant therefor is declared to have been nominated or elected to the office, or to have become entitled to be a candidate in a runoff election, or to have tied with another candidate between the two of whom the right of nomination, election, or a place on a runoff ballot is to be decided, the cost of the recount in the additional precincts shall be paid by the authority charged with the duty of paying the expenses of the election, and the amount deposited by the applicant shall be returned to him. Otherwise, the cost of the recount in the additional pre-

incts shall be paid by the applicant therefor, and any amount remaining from the deposit shall be returned to him. Any costs for the recount in the additional precincts over the amount of the deposit shall be paid by the applicant therefor if he is charged with the cost of the recount.

Effect of Recount on an Election Contest

Subd. 12. Nothing in this section shall be deemed to prevent the filing of an election contest in a district court or to prevent the ordering of a recount in an election contest or to compel the court hearing the election contest to accept a recount under this section as conclusive of the results of the election. [Acts 1967, 60th Leg., p. 1903, ch. 723, § 37, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 2, eff. Sept. 1, 1969.]

## CHAPTER TEN. CONSTITUTIONAL AMENDMENTS

Article

- 10.01. Constitutional Amendments.
- 10.02. Duties of Officers.
- 10.03. Convention to Ratify Proposed Amendments to Federal Constitution; Election of Delegates.

### Art. 10.01. Constitutional Amendments

The election where Constitutional Amendments are to be voted on shall be held by the general election officials named by the Commissioners Court and if supervisors are desired they shall be named as provided for by the law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 167.]

### Art. 10.02. Duties of Officers

In holding elections on Constitutional Amendments the judges and clerks shall have the same qualifications, perform the same duties, and receive the same compensation as in general elections. The supervisors shall perform the same duties, be paid in the same manner, take the same oath, and have the same obligations as for general elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 168.]

### Art. 10.03. Convention to Ratify Proposed Amendments to Federal Constitution; Election of Delegates

Election of Delegates

Sec. 1. Whenever the Congress of the United States shall submit to the respective States a proposed Amendment to the Constitution of the United States and shall propose that it be ratified by conventions in the several States, an election shall be held on the fourth (4th) Saturday in August of the year in which any such amendment is submitted by the Congress of the United States, at which election thirty-one (31) delegates and thirty-one (31) alternates each, such total number of delegates and such total number of alternates to be composed of one (1) delegate and one (1) alternate from each of the

several thirty-one (31) Senatorial Districts of the State, shall be elected, provided that the same is submitted to this State within the time necessary to comply with the provisions hereof, otherwise at the succeeding General Election.

#### Nominating Conventions

Sec. 2. On the sixtieth (60th) day preceding the day of the election those persons, groups and organizations in favor of the ratification of the Amendment, and those persons, groups and organizations against the ratification of the Amendment shall hold separate Conventions in the City of Austin. Any qualified voter of this State shall be entitled to participate and vote in either of said Conventions, but not in both. Ten (10) days prior to the meeting of such Conventions it shall be the duty of the Governor of this State to designate a qualified voter of this State known by him personally to be in favor of the ratification of such Amendment, and it shall be the duty of the person so appointed to select and designate the place in the City of Austin at which the Convention of those persons, groups and organizations favoring the ratification of the Amendment shall convene and hold its meeting and the person so appointed shall preside as president pro tem until the permanent officers of the Convention are elected. The Governor shall likewise appoint a qualified voter of this State, known to him to oppose the ratification of the proposed Amendment, and the person so appointed shall select and designate the place in the City of Austin where the Convention of those persons, groups and organizations opposing the ratification of the proposed Amendment shall convene and hold their meeting, and the person so appointed shall preside and act as president pro tem until the permanent officers of the Convention of those persons opposing the ratification of the Amendment are elected.

#### Nomination and Qualifications of Delegates and Alternates

Sec. 3. After each such Convention has been organized and its permanent officers elected the same shall proceed to nominate thirty-one (31) delegates and thirty-one (31) alternates each, such total number of delegates and such total number of alternates to be composed of one (1) delegate and one (1) alternate from each of the several thirty-one (31) Senatorial Districts of the State. Candidates for the offices of delegates and alternates to the Convention to pass on the proposed Amendment shall be citizens and residents of this State and duly qualified voters in the Senatorial District from which they offer their candidacy for election, and their names shall be certified by the Chairman and Secretary of the respective Conventions to the Secretary of State within five (5) days after the day of holding the respective Convention. No person shall be eligible as a delegate or alternate of the Convention of those persons opposing the ratification of the Amendment unless he shall make affidavit before some officer authorized to administer oaths that he is opposed to the ratification of the Amendment, and will so cast

his vote in Convention, and no person shall be eligible as a delegate or alternate of the Convention favoring the ratification of the proposed Amendment unless he shall make affidavit in writing before some officer authorized to administer oaths that he favors the ratification of the Amendment, and will so cast his vote in Convention, and each such delegate and alternate shall file his affidavit with the Chairman of the Convention of which he is the nominee, or with the Secretary of State, which affidavit shall be filed within fifteen (15) days after the date of the filing of the list of delegates and alternates with the Secretary of State by the respective Chairmen of the Conventions. No nominee of either Convention shall be either a State, District or County office holder. The Chairman of each Convention shall file the affidavit of the respective nominees of each Convention with the Secretary of State, together with the certified list of nominees for said Convention.

#### Journal of Nominating Conventions

Sec. 4. Each such Convention shall be required to keep a journal of its proceedings and set forth among the minutes thereof the respective names of each delegate and alternate nominated at such Convention, together with the number of votes received by each such nominee, together with all other proceedings that may be had in said Convention. It shall be the duty of the Chairman of each such Convention, upon the adjournment thereof, to deposit each such journal with the Secretary of State where the same shall remain as a permanent public record.

#### Certification of Nominees by Secretary of State

Sec. 5. It shall be the duty of the Secretary of State to certify to the County Clerk of each county in this State the names of the persons selected as the nominees of each Convention and to show in his certificate those delegates and alternates in favor of the ratification of the Amendment and those delegates and alternates against the ratification of such Amendment.

#### General Election Laws Applicable

Sec. 6. All laws pertaining to conducting and holding General Elections and the qualifications of voters shall apply to the holding of the election ordered by the Governor except in so far as they are inconsistent with the provisions of this Act.

#### Form of Ballot

Sec. 7. The election shall be by ballot, separate from any ballot to be used at the same election, and shall be prepared as follows: It shall first state the substance of the proposed Amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively, in plain type "FOR ratification of the above Amendment," and "AGAINST ratification of the above Amendment." In the column headed "FOR ratification of the above Amendment" shall be placed the names of the nominees or

delegates and alternates nominated as in favor of the ratification; in the column headed "AGAINST ratification of the above Amendment" shall be placed the names of the nominees or delegates and alternates nominated as opposed to the ratification. The voter shall be entitled to vote for any number of candidates whose names appear on such ballot, not to exceed thirty-one (31) delegates and thirty-one (31) alternates. Such voter shall indicate his choice by drawing a line through or striking out all the names of such candidates other than the ones for whom he desires to cast his vote.

The ballot shall be substantially in the following form:

**PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES**

The Congress has proposed an amendment to the Constitution of the United States which reads as follows:

(Here insert the proposed amendment)

**INSTRUCTIONS TO THE VOTER**

FOR the ratification of the above amendment. (Insert names of delegates and then alternates in alphabetical order favoring the ratification of the amendment.)

AGAINST the ratification of the above amendment. (Insert names of delegates and then alternates in alphabetical order against the ratification of the amendment.)

**Form of Ballot in Case of Proposed Repealing Amendment**

Sec. 7a. Provided, however, that if such proposed amendment, is one which repeals another amendment to the Constitution of the United States then it shall not be necessary to state the substance of the proposed amendment; and in lieu of the words "FOR ratification of the above amendment," and "AGAINST ratification of the above amendment" at the top of the two perpendicular columns, there shall be inserted the words "FOR repeal of the \_\_\_\_\_ amendment," and the words "AGAINST repeal of the \_\_\_\_\_ amendment," respectively; the number of such amendment which it is proposed to repeal to be inserted in the blank space above, as e. g. "FOR repeal of the Eighteenth (18th) Amendment," and "AGAINST repeal of the Eighteenth (18th) Amendment." In such instances the ballot shall be substantially in the following form:

**INSTRUCTIONS TO THE VOTER**

FOR the repeal of the \_\_\_\_\_ amendment. (Inserting in the blank the number of the amendment proposed to be repealed.) (Insert names of delegates and then alternates in alphabetical order favoring the repeal of the amendment.)

AGAINST the repeal of the \_\_\_\_\_ amendment. (Inserting in blank the number of the amendment proposed to be repealed.) (Insert names of delegates and then alternates in alphabetical order against the repeal of the amendment.)

**Voting and Marking Ballots**

Sec. 7b. The voter shall be entitled to vote for not more than thirty-one (31) delegates (candidates) and thirty-one (31) alternates (candidates) and shall indicate his choice by drawing a line through or marking out all the names of such delegates (candidates) and alternates (candidates) other than the ones for whom he desires to cast his vote.

**Making and Canvassing Returns**

Sec. 8. Returns shall be made of the election in the same manner and by the same officers as is provided by law for the making of returns of elections for Railroad Commissioners. On the thirtieth (30th) day following the day of the election and not before, the Secretary of State, in the presence of the Governor and the Attorney General, or either of them, shall open and canvass the returns of the election.

**Certificates of Election**

Sec. 9. The thirty-one (31) delegates and the thirty-one (31) alternates receiving the highest number of votes shall be declared elected and the Governor shall issue to each of those persons a certificate of election which shall be signed by the Governor and attested by the Secretary of State.

**Time of Convening of Ratification Convention**

Sec. 10. On the ninetieth (90th) day following the day of the election the thirty-one (31) delegates and thirty-one (31) alternates elected at the said election and commissioned by the Governor shall convene in the City of Austin at 10 o'clock A.M., and shall thereupon constitute a convention to pass upon the question of whether or not the proposed amendment to the Constitution shall be ratified.

**Quorum: Alternates**

Sec. 11. A majority of the delegates so elected shall constitute a quorum at such convention for the purpose of transacting business. A majority of the quorum present and voting may act for the convention. In the event any delegate to such conventions, after he has been duly elected, shall die, resign, become incapacitated or fail to attend such convention, then and in any such event the alternate of such delegate shall act in the stead of said delegate with the full and complete powers of said delegate.

**Journal of Ratification Convention**

Sec. 12. The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of the ratification of the proposed Amendment, and upon final adjournment the journal reflecting the vote of the delegates, together with the minutes of the convention, shall be filed with the Secretary of State of the State of Texas where it shall remain on file as a public record.

**Certificate of Ratification**

Sec. 13. If the convention shall agree to the ratification of the proposed Amendment, a certificate to

that effect shall be executed by the President and Secretary of the Convention and transmitted to the Secretary of State of this State and to the Secretary of State of the United States. The Secretary of State shall in turn transmit such certificate under the great Seal of the Sovereign State of Texas to the Secretary of State of the United States.

Election Expenses; Duties of Public Officials

Sec. 14. The expenses necessary to conduct such election shall be paid for by the respective counties of this State in the same manner as is now provided by law with reference to any other general or special Statewide election and the duties of all public officials with reference to providing for such election shall be the same as is now prescribed by law with reference to other elections except as herein provided.

Appointment of County Chairman and Vice-Chairman

Sec. 15. The permanent chairman of each Convention provided for in Section 2 hereof is hereby empowered to appoint a chairman and vice-chairman for each county. The chairman in each county (or the vice-chairman in the event of failure or inability of the chairman) is hereby empowered to appoint one assistant election judge and one clerk for each voting precinct for the purpose of assisting in holding the election provided for by this Act. Should a chairman or vice-chairman fail to make such appointments, then the presiding judge of each precinct is hereby empowered to appoint such assistants, in the manner now provided by statute, the appointees, however, shall be selected to equally represent both sides of the question; otherwise the said election, manner of conducting the same and the returns thereof, shall be in all things held as is now provided by statute for the holding of general elections. None of the expenses arising or accruing because of the appointment of or the services rendered by the officials provided for in this Section shall be borne by the State or any county thereof; provided, however, any other usual, customary election expenses for officials to hold said election and for other election expenses shall be paid as is now provided by law for general elections.

Expenses of Delegates

Sec. 16. The delegates elected to such Convention shall defray their own expenses incurred in connection therewith.

Conflicting Statute or Resolution of Congress

Sec. 17. If Congress should, at any time, either by Resolution or by Statute, prescribe the method and manner in which the Convention shall be constituted, and shall not except from the provisions of such Statute or Resolution such States as may have theretofore provided for constituting such conventions, the provisions of this Act shall be inoperative in so far as the same shall operate as to conflict with such Resolution or Act of Congress.  
[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 169.]

## CHAPTER ELEVEN. PRESIDENTIAL ELECTION

Article

- 11.01. Time of Election.
- 11.01a. Parties Entitled to Nominate Presidential Elector Candidates.
- 11.02. Effect of Votes for Candidates of Political Parties.
- 11.03. Canvass of Votes and Returns.
- 11.04. Certification of Candidates.
- 11.05. Electors to Convene.
- 11.06. Pay of Electors.

### Art. 11.01. Time of Election

On the Tuesday after the first Monday in November, A.D. 1952, and on the Tuesday next after the first Monday in November, every four years thereafter, or at such other times as the Congress of the United States may direct, there shall be elected by the voters of the State as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect, no one of whom shall be a person holding the office of Senator or Representative in Congress, or any office of trust or profit under the United States.  
[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 170.]

### Art. 11.01a. Parties Entitled to Nominate Presidential Elector Candidates

Any political party entitled to have the names of its nominees printed on the ballot for the general election provided for in Section 9 of this code<sup>1</sup> may nominate candidates for presidential electors and have the names of its candidates for President and Vice President printed on the ballot.

[Acts 1965, 58th Leg., p. 1017, ch. 424, § 75; Acts 1967, 60th Leg., p. 1907, ch. 723, § 38, eff. Aug. 28, 1967.]

<sup>1</sup> Article 2.01.

### Art. 11.02. Effect of Votes for Candidates of Political Parties

A vote for the candidates of any political party for both President and Vice-President of the United States shall be conclusively deemed to be a vote for candidates for the same party for presidential electors, and shall be so counted and recorded for such electors as the state shall be empowered to elect. No vote shall be counted unless the voter has cast his vote for both the candidate for President and the candidate for Vice-President of the same political party.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 171; Acts 1963, 58th Leg., p. 1017, ch. 424, § 76.]

### Art. 11.03. Canvass of Votes and Returns

The canvass of the votes for candidates for President and Vice-President of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party, respectively, and the certificate of such election made by the Governor shall be in accord with such return.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 172.]

**Art. 11.04. Certification of Candidates**

The names of the candidates for President and Vice-President and for presidential electors, respectively, of a political party as defined in the law shall be certified to the Secretary of State by the chairman and secretary of the state committee of the party at least thirty-five days prior to the election. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 173; Acts 1963, 58th Leg., p. 1017, ch. 424, § 77.]

**Art. 11.05. Electors to Convene**

On or before the meeting of the electors, the Governor shall cause three (3) lists of names of such electors to be made out and delivered to them as required by Act of Congress. The electors so chosen shall convene in the Capitol at Austin on the first Monday after the second Wednesday in December next after their election and vote for President and Vice-President of the United States and make such return thereof as is or may be required by the laws of the United States. If any person so chosen elector shall, by death or disabling cause, fail to attend by the hour of two o'clock in the afternoon on the day fixed by law, and vote as required by law or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in place of any such absent or disqualified person, and shall immediately report their action to the Secretary of State. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 174.]

**Art. 11.06. Pay of Electors**

Such electors shall receive the same pay for mileage in traveling to and from Austin and twice the pay daily while engaged there in the duties required of them by law, as that allowed by law to the Members of the Legislature. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 175.]

**CHAPTER TWELVE. UNITED STATES SENATORS**

Article

- 12.01. United States Senators.
- 12.02. Vacancy in Office of United States Senator or Congressman-at-Large.
- 12.03. If Two Senators.

**Art. 12.01. United States Senators**

As to the nomination and election of United States Senators all the applicable laws of this code for the nomination and election of the Governor shall govern in the nomination and election of United States Senators. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 176.]

**Art. 12.02. Vacancy in Office of United States Senator or Congressman-at-Large**

1. When a vacancy occurs in the representation of this State in the United States Senate or in the representation of this State in the House of Representatives of the Congress of the United States by a

Congressman elected by the people at large, such vacancy shall be filled for the unexpired term in the manners herein provided.

2. If a vacancy exists in the representation of this State in the Senate of the United States at a time when the Congress is in session, the Governor shall forthwith make a temporary appointment of a suitable and qualified person to represent this State in the Senate of the United States until a senator is elected and shall have qualified.

3. If a vacancy occurs in the office of a United States Senator or a Congressman-at-Large during the year in which a general election is held in this state and prior to the tenth day of March of said year, the Governor shall, within five days after the vacancy occurs, issue writs of election directing that the nomination and election of a United States Senator or of a Congressman-at-Large to fill such vacancy shall be accomplished in the manner provided by law for the nomination and election of the Governor; provided that when a vacancy in either or both of said offices is to be filled in this manner, a candidate for nomination by any political party holding a primary election in that year shall have until the first day of April of the election year to make application to have his name placed on the official ballot to be used in the primary election held by said political party for choosing its nominee for said office to run in the general election.

4. If such vacancy occurs in either or both of the aforesaid offices during a year in which no general election is to be held or after the ninth day of March of a general election year, the vacancy shall be filled at a special election or special elections, the first of which shall be called by writ of election, issued by the Governor within five days after the vacancy occurs, directing that a special election be held throughout the state on a specified day, which shall be not less than sixty days nor more than ninety days after the date of the writ, for the purpose of electing a United States Senator or a Congressman-at-Large to fill the existing vacancy and to serve for the unexpired term of the then vacant office.

5. In all special elections called to fill a vacancy in the office of United States Senator or in the office of Congressman-at-Large a majority vote of the electors participating in said elections shall be necessary for election. In event no candidate receives a majority of the votes cast at the first election, the Governor shall, within five (5) days after the results of said election were officially declared, call a second election to be held throughout the State on a specified day which shall be not less than thirty (30) nor more than forty (40) days after the date of the writs issued by the Governor. In the second special election the candidates shall be limited to the participants in the first election who received the largest and next largest number of votes at the first election. The Secretary of State shall, within five (5) days after the results of the first election are officially declared, certify to the County Clerk of each County in the State the names of the

said two (2) candidates who are eligible to participate in the second election and the Clerks will make up the ballot for said election according to said certificate. The candidate who receives the largest number of votes in the second election shall receive a Certificate of Election to the unexpired term of the office for which he was a candidate.

6. All special elections called for the purpose of filling vacancies in the two (2) offices mentioned in this Section shall be conducted according to existing law as supplemented by this Section, but if there is a conflict between this Section and the existing law, the provisions of this Section shall prevail.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 177; Acts 1957, 55th Leg., p. 421, ch. 201, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 78.]

#### Art. 12.03. If Two Senators

When there are two (2) Senators to be elected from Texas to Congress, each candidate offering his name for election shall designate in his application for a position on the ticket whether in a general or special election or primary, whether he is a candidate for the short term or long term.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 178.]

### CHAPTER THIRTEEN. NOMINATIONS

#### Article

- 13.01. Primary Election.
- 13.01a. Who Are Members of Organized Party.
- 13.02. Nominated at Primary.
- 13.03. Date of Primary.
- 13.04. Voting Places of Political Parties.
- 13.04a. Repealed.
- 13.04b. Repealed.
- 13.05. Repealed.
- 13.06. Judges of Primary.
- 13.07. Nominations by Majority.
- 13.07a. Deposit to Accompany Application for Place on Ballot.
- 13.08. Expenses of Primary.
- 13.08a. Assessment of Candidates in Counties having Certain Populations.
- 13.08a-1. Assessment of Candidates in Counties having Certain Populations.
- 13.08b. Refund upon Death of Candidate.
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- 13.08c. Superseded.
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#### PRIMARY CONDUCT AND FINANCING LAW OF 1974

- 13.08c-2. Conduct of the Primary Elections.
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- 13.11. Test on Ballot.
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#### Article

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- 13.41. Mandamus.
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- 13.43b. Party Rules.
- 13.44. Parties of Ten Thousand (10,000) and Less Than Two Hundred Thousand (200,000).
- 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor.
- 13.45a. Regulation of Party Affairs and Conventions.
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- 13.48. Nominations Certified.
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- 13.54. By Parties without State Organization.
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- 13.57. Party Name.
- 13.58. National Convention.
- 13.59. Nominations for Two (2) or More State Offices of Same Classification.

#### Art. 13.01. Primary Election

The term "primary election," as used in this chapter [arts. 13.01-13.59], means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 179.]

#### Art. 13.01a. Who Are Members of Organized Party

(1) The members of an organized political party who shall be permitted to participate in its convention procedure as set forth in this code shall be only those persons who have become qualified as members of the party by voting in the elections of the

party or have otherwise qualified as provided in this section. Having once become a qualified member of a party, a person shall remain a qualified member of that party for the duration of that voting year.

(2) The election and convention procedure of the party shall include the general primary election and the second primary election provided for in Section 181 of this code,<sup>1</sup> and shall include the conventions of the party at precinct, county and state level in both its state convention procedure and its national convention procedure insofar as they apply herein.

(3) Persons who have not qualified as members of a political party as required by this section shall be disqualified to participate in the convention procedure of the political parties and shall also be disqualified to be selected or to hold the position of executive committee member, precinct judge or chairman, delegate to any convention of a party, national committeeman, committeewoman or presidential elector of the party.

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear that I have not voted at a primary election or participated in a convention of any other political party during this voting year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The presiding judge shall issue to each voter in a general primary election, and to each voter in a second primary election who requests it, a certificate in the following form:

Date \_\_\_\_\_

\_\_\_\_\_ has voted on this date in the  
(Name of Voter)  
primary election of the \_\_\_\_\_ Party.

\_\_\_\_\_  
Presiding Judge, Precinct No. \_\_\_\_\_,  
\_\_\_\_\_ County, Texas.

The county clerk shall furnish to each absentee voter in a general primary election, and to each absentee voter in a second primary election who requests it, a certificate in the form prescribed above, substituting the clerk's title for that of the presiding judge of the election precinct.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall state and sign an affidavit under oath to the precinct chairman that he has not participated in the primary or convention of any other party during that voting year. Thereupon, the precinct chairman

shall issue to the voter a certificate in the following form:

Date \_\_\_\_\_

\_\_\_\_\_ has affiliated with  
(Name of Voter)  
the \_\_\_\_\_ Party for the current year.

\_\_\_\_\_  
Precinct Chairman, Precinct No. \_\_\_\_\_,  
\_\_\_\_\_ County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he receives it. The county clerk shall keep the affidavits on file in alphabetical order within each precinct for a period of two years after the end of the voting year in which they are filed. The county clerk shall maintain a separate file for each political party.

(6) A certificate issued by the presiding election judge, the county clerk, or the precinct chairman as provided in this section shall serve as evidence that the person whose name appears on the certificate is affiliated with the party designated on the certificate and is therefore eligible to participate in that party's conventions.

(7) No person who participates in the primary or convention of any political party during a voting year shall participate in any subsequent primary or convention of any other party during that same voting year. Any vote cast in a primary election in violation of this prohibition shall be void and shall not be counted for any purpose, and the violator shall be punishable as provided in Article 240 of the Texas Penal Code.

(8) Any person who participates or attempts to participate in a party convention held by a political party on a certification of qualifications other than one prescribed in this section shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1959, 56th Leg., p. 1049, ch. 480, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 79; Acts 1967, 60th Leg., p. 1907, ch. 723, § 39, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2525, ch. 827, § 20, eff. Aug. 30, 1971.]

<sup>1</sup> Article 13.03.

**Art. 13.02. Nominated at Primary**

On primary election day in 1974 and every two years thereafter, candidates for all state offices to be chosen, and candidates for Congress and all District offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that casts twenty percent (20%) or more of the votes for Governor at the last general election for that office, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 180; Acts 1973, 63rd Leg., p. 1409, ch. 542, § 5, eff. Aug. 27, 1973.]

**Art. 13.03. Date of Primary**

The first Saturday in May of 1960, and every two (2) years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any office under this Article, a second primary election shall be held by such political party on the first Saturday in June succeeding such general primary election, and only the name of the two (2) candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary, except as herein stated, provided that in case no one received a majority in the first primary and if the second and third highest candidates in that race shall be tied these two (2) shall cast lots under the direction of the county chairman or state chairman as the case may be to see which of the two (2) shall have his name printed on the second primary ballots. The second primary election shall be conducted according to the law prescribed for conducting the general primary election and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations, except where provided for by law. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than thirty (30) days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them.

[Acts 1951, 52nd Leg., p. 1097, ch. 462, art. 181; Acts 1959, 56th Leg., p. 335, ch. 165, § 1.]

**Art. 13.04. Voting Places of Political Parties**

Subd. 1. The chairman of the county executive committee of each party holding a primary shall designate the polling place in each precinct where voting in the primary of that party will be held.

Subd. 2. Each political party holding a primary shall have a sign, showing the party name, prominently displayed immediately above each entrance to each of the party's precinct polling places.

Subd. 3. The primary election or convention of a political party may be held in the same building as the primary or convention of a different party or parties, but each party shall hold its primary or convention in a separate room from any other party, and the room shall be specifically designated as to political party by a sign in 160-point type or larger, prominently displayed above each entrance to the room. If such primary elections or conventions are held in adjoining rooms, there shall be no avenue of communication from one such room to the other. The voting machines, ballots, election supplies, and election officers of one primary election or convention shall not be used in the election or convention of another political party.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 182; Acts 1967, 60th Leg., p. 1909, ch. 723, § 40, eff. Aug. 28, 1967.]

**Art. 13.04A. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967**

See, now, art. 13.04.

**Art. 13.04b. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967**

See, now, art. 13.04.

**Art. 13.05. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963****Art. 13.06. Judges of Primary**

Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 184; Acts 1967, 60th Leg., p. 1909, ch. 723, § 40a, eff. Aug. 28, 1967.]

**Art. 13.07. Nominations by Majority**

In all nominations by political parties holding primary elections as provided in Chapter 13 of this Code [arts. 13.01–13.59], and amendments thereto, the candidates for County and precinct offices shall be nominated by a majority vote of the electors voting in such primary; provided that if no candidate received a majority of the votes cast for the candidates for the office for which he is a candidate, the County Executive Committee, after canvassing the results of such primary as provided by law shall cause the names of the two (2) candidates receiving the highest number of votes to be placed on the ballot to be voted upon at the second primary at the time and in the manner provided by law for such second primary. If all candidates for County and precinct offices are nominated within the County at the first primary election, it shall still be the duty of the County Executive Committee to hold a second primary election for the purpose of nominating District and State candidates.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 185.]

**Art. 13.07a. Deposit to Accompany Application for Place on Ballot**

(1) Every candidate for public office who is subject to assessment by the county executive committee for a portion of the expenses of holding the primary election, except candidates for the Legislature and for the State Board of Education, shall pay to the county chairman, at the time of filing his application for a place on the ballot, a deposit of fifty dollars. In case of district offices in districts containing more than one county or part thereof, the candidate shall pay a deposit of fifty dollars to each county chairman with whom his application is filed. A candidate for the Legislature shall pay to the county chairman, at the time of filing his application, a deposit in the amount of the maximum amount which he may be assessed in that county, or the amount of the filing fee in that county in cases where a fixed fee is prescribed. A candidate for the State Board of Education shall pay to each county chairman, at the time of filing his application, the quotient obtained upon dividing fifty dollars by the number of counties in the district in which he is a candidate. The fees and deposits accompanying the applications shall become a part of the primary fund.

(2) After the county executive committee makes the assessments provided for in Section 186 of this code,<sup>1</sup> it shall refund to each candidate within thirty days thereafter the amount of the payment in excess of the assessment against the candidate if the deposit exceeds the assessment. If the deposit does not exceed the assessment, the balance due on the assessment shall be paid as provided in Section 186.<sup>1</sup> [Acts 1963, 58th Leg., p. 1017, ch. 424, § 80; Acts 1967, 60th Leg., p. 1909, ch. 723, § 41, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.08.

**Art. 13.08. Expenses of Primary**

(1) Prior to the assessment of the candidates, the county committee shall carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks, and all other necessary expenses of holding the general primary and second primary in such county and on the second Monday in February preceding each primary, shall apportion such cost in such manner as in their judgment is just and equitable among the various candidates for nomination for district, county, and precinct offices only as herein defined, except the offices of Justice of the Court of Civil Appeals and member of the State Board of Education, and except the office of state senator and state representative if the assessment or fee payable to the county chairman is fixed at a definite amount, but taking into account the assessments and filing fees received from candidates for the Legislature and the State Board of Education. Where a district office covers more than one county, the assessment of such candidate by the county shall be not more than a sum which is the quotient of the amount which he would be assessed

if he represented only one county determined by the formula used to assess county candidates, when divided by the number of counties in his district. In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. Within 24 hours after adjournment of the meeting, the chairman shall mail to each person against whom an assessment is made a notice stating the amount of such expenses apportioned to him and informing him that the difference between the amount of the assessment and the amount of the deposit which accompanied the candidate's application must be paid to the chairman on or before the fourth Monday in February; and no person's name shall be placed on the ballot unless he pays the assessment within the prescribed time. The notices shall be sent to the candidates by registered or certified mail, and the chairman shall obtain a receipt for each letter, postmarked by the post office at which the letter is mailed, as evidence of the mailing, and shall preserve the receipts for a period of three months.

(2) A candidate filing after the date of the aforesaid meeting shall not be required to accompany his application with the deposit provided for in Section 185a of this code,<sup>1</sup> but shall pay the full amount assessed against him by the county executive committee within one week from the date on which his application is filed; provided, however, that where a fixed filing fee is required for an office included in this section, the amount of the fee must accompany the application.

(3) It shall be sufficient to meet the requirements of this law to mail by registered or certified letter to the chairman before the deadline herein provided, as shown by the postmark on the letter, a money order, a certified check, or a cashier's check; but it shall not be sufficient to make the payment by any other type of mail unless it is delivered before the deadline.

(4) A candidate for the State Board of Education shall pay a filing fee of fifty dollars, which shall be prorated equally among the counties comprising the district in which he is a candidate, and the prorated amount shall be paid to each county chairman at the time the candidate files his application for a place on the ballot.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 186; Acts 1955, 54th Leg., p. 1131, ch. 424, § 1; Acts 1955, 54th Leg., p. 1295, ch. 513, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 81; Acts 1967, 60th Leg., p. 1910, ch. 723, § 42, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.07a.

**Art. 13.08a. Assessment of Candidates in Counties having Certain Populations**

Candidates for any precinct, county or district office and the office of Congress in counties which have a population of one million (1,000,000) or more, according to the last preceding Federal Census, except candidates for the State Legislature and State Board of Education, shall not be assessed a sum in

excess of ten percent (10%) of the aggregate annual salary provided for any office of two-year terms, and fifteen percent (15%) of the aggregate annual salary provided for any office of four-year terms, to have their names placed on the ballot in any primary election. Candidates for the State Board of Education shall not be assessed a sum in excess of the amount stated in Section 186 of this Code.<sup>1</sup>

Notwithstanding other provisions of law, the county executive committee in any county which has a population of one million (1,000,000) or more, according to the last preceding Federal Census, may require candidates for State Representative to pay an amount not exceeding Five Hundred Dollars (\$500) to have their names placed upon the ballot in a primary election. A candidate for nomination for State Senator shall pay the full amount of One Thousand Dollars (\$1,000) as filing fee for office of State Senator to have his name placed upon the ballot in a primary election at the time he files his application for a place on the ballot. The payment must accompany the application and must be in the form of cash, money order, cashier's check or certified check. The application and payment must be delivered to the proper party chairman or secretary by the deadline for making application for a place on the ballot, and it shall not be sufficient for the application and payment to have been mailed before the deadline unless they are actually delivered by the deadline. After the county executive committee makes the assessments as provided in Section 186 of this Code, it shall refund to each candidate within thirty (30) days thereafter the amount of the payment in excess of the assessment against the candidate.

Notwithstanding other provisions of law, the county executive committee in any county which has a population of nine hundred thousand (900,000) to one million (1,000,000), according to the last preceding Federal Census, shall require candidates for State Senator or State Representative to pay the amount of Three Hundred Dollars (\$300) to have their names placed upon the ballot in a primary election.

Notwithstanding other provisions of law, the county executive committee in any county which has a population of six hundred fifty thousand (650,000) to nine hundred thousand (900,000), according to the last preceding Federal Census, shall require candidates for State Senator to pay the amount of One Thousand Dollars (\$1,000) and candidates for State Representative to pay the amount of Six Hundred Dollars (\$600) respectively to have their names placed upon the ballot in a primary election; however, if part of such a county is joined to two (2) or more other counties to comprise a senatorial district, the county executive committee shall require candidates for State Senator of that senatorial district to pay the amount of Two Hundred Fifty Dollars (\$250) to have their names placed upon the ballot in a primary election; and such payment must accompany the application and must be in the form of

cash, money order, cashier's check, or certified check and which shall in no event be refunded in whole or in part except in case of the death of the applicant before the primary election. Any person making a refund or participating in making a refund in violation of the provisions of this paragraph is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than ninety (90) days or by a fine of not more than Five Hundred Dollars (\$500) or by both.

In any State Representative District consisting of eight (8) and not more than nine (9) counties, the chairmen of the county executive committees shall require candidates for State Representative to pay an amount of Twenty-five Dollars (\$25) for each of the counties in said Representative District, to have their names placed upon the ballot in a primary election.

[Acts 1957, 55th Leg., p. 1426, ch. 494, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 45, ch. 16, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 82; Acts 1963, 58th Leg., p. 1280, ch. 492, § 1; Acts 1969, 61st Leg., p. 2275, ch. 766, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Article 13.08.

#### Art. 13.08a-1. Assessment of Candidates in Counties having Certain Populations

Notwithstanding other provisions of law, the county executive committee in any county which has a population of 350,000 to 640,000, according to the last preceding Federal Census, shall require candidates for State Senator or State Representative to pay the amount of \$300 to have their names placed upon the ballot in a primary election.

[Acts 1965, 59th Leg., p. 1593, ch. 688, § 1.]

#### Art. 13.08b. Refund upon Death of Candidate

If before the first primary a candidate dies or is declared ineligible to be a candidate for the office, all fees and assessments paid by the candidate, including the deposit which accompanied his application, shall be refunded to the candidate or to his estate, as the case may be. No refund shall be made upon the death or ineligibility of a nominee or of a candidate in the second primary, and no refund shall be made to a candidate who withdraws or who declines a nomination, with the exception that in the event a candidate who is subject to assessment by the county executive committee withdraws before the assessments are made, the committee shall determine the amount which would have been assessed against him if he had remained a candidate, and if the amount of the deposit made by the candidate exceeds that amount, the committee shall refund the difference to him; and with the further exception that a withdrawing, declining, or ineligible candidate and the estate of a deceased candidate shall be entitled to share in the distribution of the surplus in the primary fund the same as if he had not died, withdrawn, declined, or been declared ineligible for the nomination.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 3; Acts 1967, 60th Leg., p. 1911, ch. 723, § 43, eff. Aug. 28, 1967.]

**Art. 13.08c. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967**

**Art. 13.08c. Superseded**

*Acts 1971, 62nd Leg., 1st C.S., p. 33, ch. 11, § 4, adding a section 186c to the Election Code, classified as article 13.08c, authorized a petition of voters in lieu of payment of assessment or fee. Said Act was superseded by Acts 1972, 62nd Leg., 2nd C.S., ch. 2, classified as article 13.08c-1, post.*

**Art. 13.08c-1. Expired**

*This article, titled the McKool-Stroud Primary Financing Law of 1972, was enacted by Acts 1972, 62nd Leg., 2nd C.S., p. 7, ch. 2, §§ 1 to 4-A. The conduct and financing of the 1974 primary elections is governed by arts. 13.08c-2 to 13.08c-4.*

**PRIMARY CONDUCT AND FINANCING LAW OF 1974**

**Art. 13.08c-2. Conduct of the Primary Elections**

(a) Nominations for the general election to be held on November 5, 1974, shall be made in the manner provided in the Texas Election Code, as amended. The primary elections held by a political party pursuant to Sections 180 and 181, Texas Election Code (Articles 13.02 and 13.03, Vernon's Texas Election Code), shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in the Texas Election Code, as amended, with the following modifications and clarifications:

(b) In order for a candidate to have his name placed on the ballot for the general primary election, he must have either paid a filing fee or filed a nominating petition in compliance with Section 1(c) of this Act.

(c) Payment of filing fee:

Every candidate for public office shall accompany his application for a place on the general primary ballot with a filing fee in the amount prescribed in this section, unless he uses a nominating petition prescribed by this section. The schedule of fees is as follows:

1. All statewide offices .....	\$1000
2. United States representative .....	500
3. State senator .....	400
4. State representative .....	200
5. Member, State Board of Education .....	50
6. Chief Justice or Associate Justice, Court of Civil Appeals .....	400
7. District judge or judge of any other court having status of district office as classified in Section 61c, Texas Election Code .....	400
8. District attorney or criminal district attorney .....	400
9. All county offices, as classified in Section 61c, Texas Election Code, except county surveyor or inspector of hides and animals .....	150
10. County surveyor or inspector of hides and animals .....	50
11. County commissioner .....	100
12. Justice of the peace or constable, for counties above 200,000 population .....	100
for counties under 200,000 population ...	50
13. Public weigher .....	50

In lieu of payment of a filing fee, a candidate may file a nominating petition which must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide offices, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory. In no event shall the number of signatures required be less than 25 nor more than 500.

No person shall sign more than one nominating petition for the same office. Signing two petitions makes both signatures void.

The nominating petitions must be submitted to the appropriate official with the candidate's application for a place on the general primary ballot.

(d) The fees paid to the county chairman pursuant to Section 1(c) of this Act and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 of the Texas Election Code, as amended (Article 13.18, Vernon's Texas Election Code), and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying the costs. The remaining costs incurred shall be borne by the state in accordance with the procedures outlined in Section 2 of this Act. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state all filing fees collected pursuant to Section 1(c) of this Act and an itemized listing of these fees. The secretary of state shall deposit these fees in a suspense account with the state treasury. The secretary of state is authorized to make any refunds pursuant to Section 186b, Texas Election Code, from this fund. The fees collected under any extended deadline shall be sent to the secretary of state before the date of the general primary election. Within five days after the date of the general primary election, the balance remaining in the suspense account shall be deposited to the general revenue fund.

(e) In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Section 79 of the Texas Election Code, as amended (Article 7.14, Vernon's Texas Election Code), and not exceeding \$3 per unit for voting equipment adopted under Section 80

of the Texas Election Code, as amended (Article 7.15, Vernon's Texas Election Code). The maximum amount fixed in this Act includes the least price for use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station, but all actual expenditures incidental to operation of the central counting station in counting the ballots are payable out of the primary fund.

(f) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with the conduct of absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punchcard units used in conducting the absentee voting.

(g) The total combined compensation paid to the county chairman and the secretary of the county executive committee (where the committee has named a secretary) and to any office personnel employed to assist in the performance of the duties placed upon the chairman, the secretary, and the members of the county executive committee shall not exceed five percent of the amount actually spent in holding the primary elections for the year, exclusive of the compensation paid to these officers and employees.

(h) Charges for office expenses shall not be allowed for a period extending beyond the 10th day after the date of the last primary held by the party nor more than 30 days before the filing deadline.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place, taking into account the number of registered voters in the election precinct, the number of votes cast in the precinct in the party's primary elections in 1972, the method of voting, and other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks employed in excess of the applicable limit set by the rules if he finds that employment of additional clerks was justified by special circumstances existing in the precinct. The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at least 10 days before the election to which the rules apply.

(j) The county chairman is not required to file the financial report provided for in Subdivision 5 of Section 196 of the Texas Election Code, as amended (Article 13.18, Vernon's Texas Election Code), but he shall account for the primary fund in the manner provided in Section 2 of this Act.

(k) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The state attorney general shall be specifically responsible for the enforcement of this section.

(l) In the event a court of competent jurisdiction declares any portion of this section to be invalid, and by the 60th day before the filing deadline for a general primary election the judgment has become final or enforcement of the judgment has not been suspended, and the legislature has not corrected the invalidity (or in the event these circumstances arise subsequent to the 60th day before the filing deadline), the secretary of state shall promulgate a schedule of fees consistent with the court's judgment and the valid portions of this section; and that schedule shall be substituted for the statutory schedule until the legislature enacts a new schedule.

[Acts 1973, 63rd Leg., p. 1404, ch. 542, § 1, eff. Aug. 27, 1973.]

#### Art. 13.08c-3. State Financing

(a) Each county chairman of each political party in the state which is holding primary elections in 1974 shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary election to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes and court decisions of this state. The secretary of state shall subtract from the approved estimate any amount of the fees and contributions received by the chairman remaining over and above legitimate expenses incurred for the conduct and financing of the primary elections for the year 1974, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller forthwith shall issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary,

the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman, and the comptroller shall issue a warrant to the chairman in the amount certified. If the total amount of the fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall refund the difference to the state, in the form of a check made payable to the secretary of state. The secretary of state shall deposit the check in the state treasury to the credit of the appropriation from which payments to the county chairman were made by the secretary of state.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable, for any debts legally incurred in the implementation of this Act but unpaid because the appropriation provided by the legislature for the implementation of this Act was not sufficient to cover the actual expenditures made.

(f) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting their statements and reports to him.

(g) Wherever the word "county chairman" is used in this Act, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(h) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an

increase under Subsection (c) of this section, the county chairman may appeal to a district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts for payment within 10 days after its submission to the secretary of state may be considered disallowed for this purpose. Judicial review shall be by trial de novo as are appeals from the justice court to the county court.

[Acts 1973, 63rd Leg., p. 1407, ch. 542, § 2, eff. Aug. 27, 1973.]

#### Art. 13.08c-4. Funding

Funds for the administration of this Act shall be supplied from the general revenue fund by the General Appropriations Act. The secretary of state is authorized to expend funds appropriated in the General Appropriations Act for the administration of this Act for seasonal and part-time help, consumable supplies and materials and current and recurring operating expenses in an amount not to exceed \$30,000.

[Acts 1973, 63rd Leg., p. 1408, ch. 542, § 3, eff. Aug. 27, 1973.]

#### Art. 13.09. Balloting at Primaries: Write-in Votes Permitted for Party Offices Only

(a) The vote at all primary elections shall be by official ballot, which shall have a detachable stub as described in Section 61 of this code. The name of the party shall be printed at the head of the ballot, and under such head shall be printed the names of all candidates, those for each nomination being arranged in the order determined by the county executive committee as herein provided for, beneath the title of the office for which the nomination is sought. The ballot shall also contain the instruction note prescribed in Section 61 of this code.<sup>1</sup>

(b) Write-in votes shall not be permitted in primary elections for any office other than the party offices of county chairman and precinct chairman, and a write-in vote for any other office shall be void and shall not be counted for any purpose. Write-in votes for the party offices of county chairman and precinct chairman shall be permitted in the general primary election but shall not be permitted in the second (runoff) primary. On the general primary ballot, an appropriate space for a write-in candidate shall be provided under the title of each of these two party offices, following the names of the candidates; and if for either office there is no candidate whose name is to be printed on the ballot, the title of the office shall nevertheless be printed on the ballot with a space for a write-in candidate provided thereunder.

(c) The official ballot shall be printed in black ink upon white paper. The ballot shall be printed by the county committee in each county, which shall fur-

nish to the presiding judge of the general primary for each voting precinct at least as many of such official ballots as the county election board determines is necessary for each party based upon the votes cast in the area in the last preceding presidential general election.

(d) Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county, or justice precinct, such candidates shall be voted for and nominations made separately, and all such nominations shall be separately designated on the official ballots by numbering the same "Place No. 1," "Place No. 2," etc. Each candidate for such nominations shall designate in the announcement of his candidacy, and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. Each voter shall vote for only one candidate for each nomination. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 187; Acts 1957, 55th Leg., p. 802, ch. 338, § 3; Acts 1963, 58th Leg., p. 1017, ch. 424, § 85; Acts 1967, 60th Leg., p. 1911, ch. 723, § 44, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1410, ch. 542, § 8, eff. Aug. 27, 1973.]

<sup>1</sup> Article 6.05.

**Art. 13.10. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 13.11. Test on Ballot**

No official ballot for primary election shall have on it any symbol or device or any printed matter, except a uniform primary test, reading as follows: "I am a \_\_\_\_\_ (inserting name of political party or organization of which the voter is a member) and pledge myself to support the nominee of this primary"; and any ballot which shall not contain such printed test above the names of the candidates thereon, shall be void and shall not be counted. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 189.]

**Art. 13.11a. Ineligibility to Become Opposing Candidate**

Any person who has participated as a voter or as a candidate in either the first primary election or the runoff primary election of a political party shall be ineligible to have his name printed on the ballot at the succeeding general or special election as an independent candidate for any office for which a nomination was made by such party at either such primary election, and shall be ineligible to have his name printed on the ballot as the nominee of any other party for any office to be voted on at the general or special election. [Acts 1963, 58th Leg., p. 1017, ch. 424, § 86.]

**Art. 13.12. Application for Place on Ballot; Filing; Deadline; Extension; Withdrawal; Notice**

The application to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for the

nomination of such party for any office for which a nomination may be made at such primary shall be governed by the following:

1. Such application shall be in writing, indicating the office for which nomination is sought and whether for a full term or for an unexpired term, signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence, and post-office address of such person, and if made by him shall also state his age. If the application is made by qualified voters, there shall be endorsed on the application or filed in a separate instrument, before the deadline for filing applications, a statement signed by the candidate showing his consent to such candidacy.

2. The application shall be filed with the state chairman in the case of all statewide offices and all district offices which are filled by the choice of voters residing in more than one county. It shall be filed with the county chairman of the particular county in the case of county and precinct offices and district offices which are filled by the choice of voters residing in only one county or less than one county. Except as provided in Paragraph 2a of this section, the application shall be filed not later than 6 p. m. on the first Monday in February preceding such primary.

2a. The filing deadline stated in Paragraph 2 of this section shall be extended for the particular party primary and office involved, as provided in this paragraph:

(i) if between the fifth day preceding the first Monday in February and the 30th day preceding the general primary, both dates included, any candidate for an office dies, if the candidate had complied with all prerequisites for having his name placed on the ballot which he was required to perform by the date of his death;

(ii) if between the first Monday in February and the 30th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or

(iii) if between the first Monday in February and the 30th day preceding the general primary, both dates included, the only candidate who has filed for a particular office in the primary of that party withdraws or is declared ineligible.

In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p. m. on the 15th day following the death, withdrawal, or declara-

tion of ineligibility of the candidate; provided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 25th day preceding the primary, the deadline for filing shall be 6 p. m. on the 25th day preceding the primary. Notwithstanding the provisions of Paragraph 2b of this section, an application which is not received by the chairman until after 6 p. m. on the 25th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing. Further, notwithstanding the provisions of Section 186<sup>1</sup> or any other provision of this code, the full amount of the assessment or filing fee must be received by the chairman not later than 6 p. m. on the 25th day.

2b. Except as otherwise provided in Paragraph 2a, an application filed under either Paragraph 2 or Paragraph 2a of this section shall be considered filed if sent to the proper chairman at his post-office address by registered or certified mail from any point in this state not later than the day before the filing deadline, as shown by the postmark. Any application not received by the chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of mail unless it is delivered before the deadline.

2c. A candidate may withdraw by filing with the chairman or chairmen with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each county chairman with whom the candidate's application was filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

2d. A candidate shall not be permitted to withdraw during the period of 20 days preceding the general primary. If after the 30th day preceding the general primary a candidate dies or an incumbent or an unopposed candidate

withdraws or is declared ineligible, the procedure detailed in Section 104 of this code<sup>2</sup> shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

3. Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county a list of the names of all candidates, arranged by office for which nomination is sought, whose applications have been timely received. In like manner each chairman shall file, within three days after any extended filing deadline under Paragraph 2a of this section, a supplemental list of candidates whose applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

4. On the second Monday in March preceding each general primary, the state committee shall meet at some place to be designated by its chairman, who shall not less than three days prior to such meeting notify by mail all members of the committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names and county of residence of such candidates as shown by the applications received by him. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish same, and one copy shall at once be mailed to the chairman of the executive committee of each county.

5. The terms of this law shall apply to the county chairman and precinct committeemen, and the names of such candidates shall not be printed on the primary ballot unless such application shall have been filed as provided herein.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 190; Acts 1959, 56th Leg., p. 335, ch. 165, § 3; Acts 1962, 57th Leg., 3rd C.S., p. 45, ch. 16, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 87; Acts 1967, 60th Leg., pp. 1912, 1913, ch. 723, § 45, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1409, ch. 542, § 7, eff. Aug. 27, 1973.]

<sup>1</sup> Article 13.08.

<sup>2</sup> Article 8.22.

#### Art. 13.12a. Nomination and Election to Fill Unexpired Term

(1) Offices to which applicable; occurrence of vacancy. The provisions of this section shall govern nomination for and election to unexpired terms which are to be filled by election at the general election, in state, district, county and precinct offices where the vacancy occurs by reason of the creation of a new office or the death, resignation, or removal from office of the incumbent in an existing office,

and the length of the unexpired term to be filled at the election extends beyond the first day of January following the election. This section does not apply to offices, vacancies which are to be filled by special election, nor does it apply to the office of United States Senator, which is governed by Section 177 of this code.<sup>1</sup> For the purpose of this section, where a new office is created to come into existence at a date subsequent to the effective date of the statute or date of entry of the order creating it, the vacancy shall be deemed to occur as of the effective date of the statute or date of entry of the order, and where the incumbent of an office has submitted a resignation to become effective at a future date, the vacancy shall be deemed to occur upon acceptance of the resignation.

(2) Nominations by parties holding primary elections. For any party holding primary elections for nominating candidates for the ensuing general election, nominations for unexpired terms shall be made in accordance with the following provisions.

(i) If the vacancy occurs more than five days prior to the regular deadline for filing an application for a place on the general primary ballot, as provided in Section 190 of this Code,<sup>2</sup> nomination for the unexpired term shall be made by primary election in the same manner and under the same rules applicable to nominations for full terms.

(ii) If the vacancy occurs on or after the fifth day preceding the regular filing deadline and more than thirty days before the day of the general primary election, nomination for the unexpired term shall be made by primary election, and candidates shall have until the end of the twenty-fifth day preceding the day of the general primary in which to file applications for a place on the primary ballot. The application must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing. Except as otherwise provided herein, the application shall conform to the requirements of Section 190 of this Code. A candidate for an office for which a fixed filing fee is prescribed by this Code shall pay the fee within three days after he files his application for a place on the ballot; provided, however, that in every case the payment must be received by the chairman before the deadline for filing applications under this paragraph. A candidate for an office which is subject to assessment by the county executive committee shall accompany his application with the deposit required by Section 185a of this Code.<sup>3</sup> The county executive committee shall fix the amount of the assessment and the county chairman shall mail to each candidate a statement of the amount assessed against him, and the candidate shall pay the balance of the assessment within five days after the date on which the statement is mailed. Immediately

following the deadline for filing applications, the state chairman shall certify to the county chairman the names of candidates, if any, who have filed applications with him and have paid their filing fee in accordance with this paragraph. Whenever the name of more than one candidate for the same office is to be placed on the ballot pursuant to the provisions of this paragraph, the county chairman shall call a meeting of the primary committee, in time to allow printing of the ballots before commencement of absentee voting in the general primary, and the primary committee shall determine by lot, in open meeting, the order in which the names of the candidates shall be printed on the ballot. If there is not more than one candidate for the same office, the county chairman shall be authorized to make any necessary changes in the ballot as previously made up by the primary committee.

(iii) If the vacancy occurs on or after the thirtieth day preceding the day of the general primary and more than twenty days before the day of the general election, the state executive committee in the case of state offices, the appropriate district executive committee in the case of district offices, the county executive committee in the case of county offices, and the appropriate precinct committee in the case of precinct offices, shall have the power to name a nominee for such office, and a nomination shall not be made by any other method; provided, however, that in any case where a district committee empowered to name a nominee fails to do so because it is unable to agree upon a nominee by majority vote, the state executive committee of that political party may name a candidate for such office and certify the name of the nominee to the proper officer.

(3) Nominations by parties not holding primary elections. For any party which is authorized to make nominations by party conventions, as provided in this Code, a nomination for the unexpired term shall be made at the appropriate party convention having power to make nominations for the particular office if the vacancy occurs more than two days prior to the date on which the convention is held. If the vacancy occurs on or after the second day preceding the convention and more than twenty days before the day of the general election, the appropriate executive committee of the party shall have the power to name a nominee, and a nomination shall not be made by any other method.

(4) Nominations by executive committees. If the vacancy occurs more than forty days before the day of the general election, the nomination must be made and certified to the proper officer not later than thirty-five days before the day of the general election, except that where a district committee has been unable to agree upon a nominee for a district office due to a tie vote, a nomination by the state executive committee shall be made and certified not

later than twenty days before the day of the general election. For subsequent vacancies, the nomination shall be made and certified not later than twenty days before the day of the general election. Nominations for state offices and for district offices (including districts composed of only one county or part of one county) shall be certified to the Secretary of State, and nominations for county and precinct offices shall be certified to the county clerk. The certificate of nomination shall be signed and acknowledged by the chairman of the committee making the nomination, and shall set forth the name of the nominee, the office for which he was nominated, and when, where, by whom, and how the nomination was made.

(5) Independent and nonpartisan candidates. If the vacancy occurs on or before the date of the second primary election, applications of independent or nonpartisan candidates must be filed in accordance with the provisions of Section 227 of this Code,<sup>4</sup> not later than thirty days after the second primary election day. If the vacancy occurs after the second primary election day, and more than twenty days before the day of the general election, independent or nonpartisan candidates may file applications in the manner provided in Section 227, except that the application shall be filed not later than thirty-five days before the day of the general election if the vacancy occurred more than forty days before the day of the general election, and for subsequent vacancies, the application shall be filed not later than twenty days before the day of the general election. No person shall sign an application prior to the occurrence of the vacancy, and any signature before that time shall be void.

(6) Write-in candidates. If the vacancy occurs more than twenty days before the day of the general election, the title of the office shall be printed on the ballot for the general election regardless of whether any nominations have been made for the unexpired term, and each voter may write in the name of the candidate of his choice.

(7) When election not to be held. If a vacancy occurs within twenty days before the day of the general election, no one shall be elected to the unexpired term at that election, and the person appointed to fill the vacancy shall continue to hold office until the next succeeding general election and until a successor has been elected and has qualified.

(8) In all nominations made by an executive committee under this section or under Section 233 of this code,<sup>5</sup> or under any other provision of law, a majority of the members of the committee must participate in making the nomination, and all nominations must be made by a majority vote of those members participating in the nomination.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 88; Acts 1967, 60th Leg., p. 1913, ch. 723, §§ 46 to 48, eff. Aug. 28, 1967.]

<sup>1</sup> Article 12.02.

<sup>2</sup> Article 13.12.

<sup>3</sup> Article 13.07a.

<sup>4</sup> Article 13.50.

<sup>5</sup> Article 13.56.

#### Art. 13.13. Certificates to County Committee

At the meeting of the county executive committee provided for in Section 195 of this Code,<sup>1</sup> the county chairman shall present to the committee the certificates of the chairman of the state committee, showing the names of all persons whose names are to appear on the official ballot as candidates for statewide offices and the office of Justice of the Court of Civil Appeals.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 191; Acts 1963, 58th Leg., p. 1017, ch. 424, § 87.]

<sup>1</sup> Article 13.17.

#### Art. 13.14. Primary Committee

Subject to the approval of the committee, the county chairman shall appoint a subcommittee of five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet on the fourth Monday in March and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the names of the candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 192; Acts 1959, 56th Leg., p. 335, ch. 165, § 4.]

#### Art. 13.15. Filing Fees for Certain Offices

Candidates for United States Senator and all those who are candidates for state offices to be voted upon by the qualified voters of the whole state shall pay to the chairman of the state executive committee \$1,000. Candidates for Congressman-at-large or for justice of the court of civil appeals shall pay to the chairman of the state executive committee five percent of one year's salary. A candidate who is required to pay a filing fee as herein provided shall not be required to pay any other sum to any other person or committee to have his name placed on the ballot as such candidate. Payment of the fee herein required must be made at the time the candidate files his application for a place on the ballot, and the name of no person who is required to pay a filing fee in any place or to the chairman of the state executive committee shall be placed on the ballot unless he has paid the fee in accordance with these provisions.

[Acts 1951, 52nd Leg., p. 1097, art. 193; Acts 1955, 54th Leg., p. 1295, ch. 513, § 2; Acts 1961, 57th Leg., p. 976, ch. 424, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 89; Acts 1969, 61st Leg., p. 2662, ch. 878, § 31, eff. Sept. 1, 1969.]

#### Art. 13.16. Payments by Candidates for State Senator or Representative

Subd. 1. Except as otherwise provided in this code, no candidate for nomination for state senator shall be required to pay to the county executive committee to have his name placed on the primary ballot more than the following amounts:

1. One dollar per county for counties having a population of less than 5,000.

2. Five dollars per county for counties having a population of 5,000 and not more than 10,000.

3. Ten dollars per county for counties having a population of more than 10,000 and less than 40,000.

4. Fifty dollars per county for counties having a population of 40,000 and not more than 125,000.

5. Seventy-five dollars per county for counties having a population of more than 125,000 and not more than 200,000.

6. One hundred dollars per county for counties having a population of more than 200,000.

7. One hundred dollars per county for all senatorial districts composed of no more and no less than two counties, regardless of the population of such counties.

The population in each case is to be determined by the last preceding federal census.

Subd. 2. Except as otherwise provided in this code, each candidate for nomination for state representative shall pay a filing fee of \$150. In districts containing all or part of more than one county, the filing fee shall be prorated among the counties comprising the district on the basis of the percentage of the population of the district residing in each county, as determined by the last preceding federal census. The chairman of the state executive committee of each political party which is holding a primary election shall compute the prorations and shall forward to the chairman of each county executive committee of that party the pertinent information for his county not later than the first day of December preceding the election year.

Subd. 3. Where some other section of this code provides for an assessment or filing fee at variance with this section, the special provision of the other section shall control.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 194; Acts 1969, 61st Leg., p. 2662, ch. 878, § 32, eff. Sept. 1, 1969.]

#### Art. 13.17. Order of Offices and Names on Ballot

(a) The various county committees of any political party, on the third Monday in March preceding each general primary, shall meet at the county seat and determine by lot, in open meeting, the order in which the names of all candidates for all offices, including statewide races, requested to be printed on the official general primary ballot shall be printed thereon.

(b) At the meeting of the county executive committee for canvassing the returns of the general primary, as provided for in Section 202 of this code,<sup>1</sup> the committee shall determine in like manner the order in which the names of candidates for county and precinct offices shall be printed on the ballot in those races for which a runoff election is necessary. Upon receipt from the state chairman of the names of candidates for state and district offices which are to be printed on the second primary ballot, the

chairman of the county executive committee shall immediately convene the primary committee, which shall determine by lot in open meeting the order in which the names of the candidates for state and district offices shall be printed on the second primary ballot and shall make up the official ballot for such election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 195; Acts 1959, 56th Leg., p. 335, ch. 165, § 5; Acts 1967, 60th Leg., p. 1914, ch. 723, § 49, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.24.

#### Art. 13.18. County Executive Committees

Subd. 1. There shall be for each political party required by law to hold primary elections for nomination of its candidates, a county executive committee in each county, to be composed of a county chairman and one member from each election precinct in such county. Each committeeman shall be chairman of his election precinct. The county chairman and the committeeman shall be elected by majority vote at the primary elections every two years, the county chairman by the qualified voters of the whole county, and the precinct chairman by the qualified voters of their respective election precincts. If in any race no candidate receives a majority of the votes at the general primary, a runoff election for the office shall be held at the second primary election. The county chairman and the precinct chairmen shall assume the duties of their respective offices on Saturday following the runoff primary immediately after the committee has declared the results of the runoff primary election. The list of precinct chairmen and the county chairman so elected shall be certified by the chairman of the county committee to the county clerk, along with the nominees of the party.

Subd. 2. No person shall be permitted to hold a proxy or vote a proxy at meetings of the county executive committee. Any vacancy in the office of county chairman or precinct chairman shall be filled by the committee. A majority of the total membership of the committee must participate in filling a vacancy, and the person selected must receive a majority vote of those members participating in the selection. Each precinct chairman shall be a resident of the precinct which he represents, and the office shall become vacant if he changes his residence to a place outside the precinct. Where the boundaries of election precincts are changed by the commissioners court, existing precincts altered, new precincts formed, or former precincts abolished, if only one previously elected or appointed precinct chairman resides within a precinct as so changed, he shall continue in office as chairman of that precinct until his successor is elected and assumes office. If more than one precinct chairman resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies. Changes in precinct boundaries made by the commissioners court shall not become effective to alter or affect the membership of the county executive committee until the

first day of February following the entry of the order making the change.

Subd. 3. Whenever a vacancy occurs in the office of county chairman, the secretary of the county executive committee may call a meeting of the committee for the purpose of filling the vacancy at any time after the vacancy occurs, and upon the written request of any member of the committee, the secretary shall call the meeting for a date not more than 20 days after he receives the request, giving notice to each member of the time and place where the meeting will be held and the purpose of the meeting. If the county committee does not have a secretary, or if the secretary fails to call a meeting as herein provided upon being requested to do so, the chairman of the state executive committee shall call the meeting in like manner upon written request of any member of the county committee. The officer who calls the meeting shall designate one member to act as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman.

Subd. 4. The county executive committee may name a secretary, who may be either a member of the committee or such other person as the committee may select, and the secretary is hereby authorized to receive applications for a place on the primary ballot and when so received the application shall be officially filed. The combined compensation allowed the secretary and the chairman for their services shall in no case exceed five percent of the amount actually spent for necessary expenses in holding the primary election for that year, exclusive of the compensation allowed to the chairman and secretary.

Subd. 5. The funds received by the county executive committee from fees and assessments paid by candidates shall constitute the primary fund, and any surplus remaining in the fund after payment of the necessary expenses for holding the primary elections for that year shall be distributed pro-rata to the candidates not later than the first day of November of the year in which the primaries were held. The county chairman shall make or have made a detailed financial report or audit of all moneys received, expended, and on hand, and such audit or financial statement shall be sworn to by the county chairman as to its accuracy and shall be filed with the county clerk not later than the first day of November of that year. Such audit or financial statement shall be open to public inspection.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 196; Acts 1963, 58th Leg., p. 1017, ch. 424, § 90; Acts 1969, 61st Leg., p. 2662, ch. 878, § 33, eff. Sept. 1, 1969.]

#### Art. 13.18a. District and Precinct Executive Committees

(1) For a district composed of more than one county or part thereof, the county chairman of each county wholly within the district shall be ex officio a member of the district executive committee for each such district of which his county is a part. When a part of a county is joined with one or more other

counties or parts of counties to form a district, at the meeting of the county executive committee provided for in Section 186 of this code<sup>1</sup> the precinct chairman of the election precincts included within such part of the county shall elect one of their number to serve as district committeeman; and a district committeeman shall be selected in this manner for each type of district and for each district for which any part of the county less than the whole county is joined with territory in another county or counties. The district committee thus formed shall elect its own chairman. Whenever a vacancy occurs in a district office or in the nomination for a district office and the district committee is empowered to name a nominee or a substitute nominee, or whenever for any other reason it becomes necessary for the district committee to meet and organize, the chairman of the state executive committee shall call a meeting of the district committee by giving notice to each member of the time and place where such meeting will be held and of the purpose of the meeting. The state chairman shall designate one member as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman. The chairman elected by the committee shall continue to act as chairman during the remainder of that term of office, and shall call any subsequent meetings of the committee which are held during that time.

(2) For a district composed of only one county, the county executive committee shall constitute the district executive committee for that district, and the county chairman shall be chairman of the district executive committee.

(3) For a district composed of only a part of one county, the precinct chairmen of the election precincts included within the district shall constitute the district executive committee. At the meeting of the county executive committee provided for in Section 186 of this code,<sup>1</sup> the precinct chairmen within the district shall elect one of their number to serve as chairman of the district executive committee; and a chairman shall be selected in this manner for each type of district and for each district composed of only a part of the county.

(4) Within three days after the aforesaid meeting of the county executive committee, the county chairman shall forward to the state chairman the names of the district committeemen and of the chairmen of the district committees who were selected at the meeting.

(5) At this same meeting of the county committee, the precinct chairmen in each commissioners precinct and justice precinct shall select one of their number to serve as chairman of the precinct executive committee for each respective commissioners precinct and justice precinct. The precinct chairmen of the election precincts within the commissioners precinct or justice precinct shall constitute the precinct committee.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 91; Acts 1967, 60th Leg., p. 1914, ch. 723, § 50, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.08.

**Art. 13.18b. Names of Elected Party Officers to be Recorded**

In certifying the names of the elected county chairman and precinct chairmen to the county clerk, as required by Section 196 of this code, the county chairman shall enter the names on a separate list from the list of party nominees certified by him. In the list he shall include the addresses and precinct numbers of the precinct chairmen and the address of the county chairman. He shall mail a copy of the list to the chairman of the state executive committee of the party. The county clerk shall record the names of the elected party officers, designating the office to which each person was elected, in the book provided for in Section 116 of this code.<sup>1</sup> The purpose of requiring certification of the names of the elected party officers is to provide a public record thereof, and the titles of the party offices and the names of the persons elected thereto shall not be placed on the general election ballot.

[Acts 1965, 59th Leg., p. 1552, ch. 678, § 13, eff. June 18, 1965; Acts 1967, 60th Leg., p. 1915, ch. 723, § 51, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.34.

**Art. 13.19. Supplies**

The executive committee shall have a general supervision of the primary in such county, and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies necessary for holding same in each precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four (24) hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 197.]

**Art. 13.20. Booths Used for Primary**

The voting booths, ballot boxes and guard rails, prepared for a general election, may be used for the organized political party nominating by primary election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 198.]

**Art. 13.21. Lists of Voters**

The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, original and supplemental lists of the qualified voters of each precinct in the county, and such chairman shall place the same for reference in the hands of the election officers of each election precinct before the polls are open. No primary election shall be legal unless such lists are obtained and used for reference

during the election. Opposite the name of every voter on said list shall be stamped or written with pen and ink, when his vote is cast, the words "primary-voted," with the date of such primary under the same.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 199; Acts 1963, 58th Leg., p. 1017, ch. 424, § 30.]

**Art. 13.22. Precaution Against Fraud**

The same precautions required by law to secure the purity of a ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or place prepared for voting and the procedure involving the removal of the detachable stub and the depositing of the ballot and the stub in the proper boxes shall be observed in all primary elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 200.]

**Art. 13.23. Ballots Delivered to County Clerk**

Immediately after the counting of the ballots is completed as required in Section 101 of this code,<sup>1</sup> and not later than twenty-four hours after closing of the polls, the presiding judge of each election precinct shall deliver to the county clerk the ballot box containing ballots voted, in the manner prescribed in Section 114 of this code;<sup>2</sup> and all other provisions of Section 114 shall also apply to primary elections. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 201; Acts 1963, 58th Leg., p. 1017, ch. 424, § 92; Acts 1967, 60th Leg., p. 1915, ch. 723, § 52, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.19.

<sup>2</sup> Article 8.32.

**Art. 13.24. Returns and Canvass**

Immediately upon completion of counting of the ballots, as required in Section 101 of this code,<sup>1</sup> the presiding judge of each election precinct shall notify the chairman of the county executive committee either personally or by telephone of the results. He shall immediately thereafter make out returns of the same in the manner prescribed in Section 111 of this code<sup>2</sup> and shall immediately and not later than twenty-four hours after the closing of the polls, make the proper distribution of the returns and other records of the election as provided in Section 111b of this code.<sup>3</sup>

Upon receiving returns from each election precinct in the county, the chairman of the county executive committee shall order the members of the county executive committee to convene at the county seat of the county on the following Tuesday succeeding the day of such primary election, and the returns shall be opened by the committee in executive session and shall be canvassed by them. The results recording the state of the polls in each precinct shall be entered in the book provided for in Section 116 of this code<sup>4</sup> by the county clerk, and the chairman of the county executive committee shall furnish to the county clerk the necessary information for compliance with this provision. Upon relation of the county chairman, the county attorney

shall immediately institute mandamus proceedings in the proper court to compel delinquent returning officers to make proper returns as required by law, and it shall be the duty of the county chairman and county clerk to notify the county attorney of the delinquency.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 202; Acts 1959, 56th Leg., p. 221, ch. 130, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 6; Acts 1963, 58th Leg., p. 1017, ch. 424, § 93; Acts 1967, 60th Leg., p. 1915, ch. 723, § 53, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.19.

<sup>2</sup> Article 8.29.

<sup>3</sup> Article 8.29b.

<sup>4</sup> Article 8.34.

#### Art. 13.24a. Precinct Returns Forwarded to Secretary of State

Subd. 1. Within 30 days after each primary election, the chairman of the county executive committee shall forward to the Secretary of State a report of the number of votes cast for each candidate for a statewide office in each precinct of the county. The report may be in the form of either transcribed or photographic copies of the precinct returns for the statewide offices as made by the presiding judges of the election, or in the form of a tabulated statement compiled from the official canvass by the county executive committee, or in such other form as the Secretary of State approves for reporting the information to him.

Subd. 2. The Secretary of State shall preserve all information received under the provisions of Subdivision 1 of this section as public records of his office, either in the form in which the information is reported to him or in the form of a tabulated statement prepared by him from the reports received from the county chairman, for a period of 10 years, after which time he may transfer the records to the records management division of the State Library for further retention for a period of 20 years. At the expiration of 30 years from the date of the election, the State Librarian may dispose of the records in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

Where the Secretary of State prepares a tabulated statement from reports furnished to him by the county chairman, he shall preserve the reports for a period of five years, after which time he may transfer them to the records management division of the State Library, and the State Librarian may dispose of them in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

[Acts 1971, 62nd Leg., p. 47, ch. 24, § 3, eff. March 18, 1971.]

#### Art. 13.25. Canvass by Committee

At the meeting of the county executive committee provided for in the preceding section, returns from the election precincts of the county shall be canvassed by the committee in accordance with the provisions of this section. Such canvass shall include

an actual checking and comparison of the poll lists with the tally lists and return sheets, and a mere tabulation of votes as shown by the return sheets shall not be deemed a compliance with this provision. All discovered errors in the returns shall be corrected before the results of the election are certified, and upon the sworn statement of any candidate filed with the committee within seven days after the date of canvass, setting out any alleged error in the primary election returns as certified by the chairman of the committee, the committee shall be reconvened for the investigation and consideration of such alleged error, which provision is hereby declared to be mandatory and may be enforced by writ of mandamus. When the votes have been canvassed in accordance with the foregoing provisions and the result thereof declared by the committee, the chairman of the committee shall make a list of the candidates for county and precinct offices who received the necessary vote to nominate and shall certify the same and deliver it to the county clerk of the county. At the meeting of the committee after the general primary, in case no candidate received a majority of the votes the county executive committee shall determine the two candidates who received the highest number of votes cast for all candidates for the particular office and order their names printed on the ballot for the second primary.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 203; Acts 1963, 58th Leg., p. 1017, ch. 424, § 94.]

#### Art. 13.26. Tie in Primary

If, upon a canvass of the returns of the first primary election, it appears that for a county or precinct office, the two (2) highest candidates have received an equal number of votes, then the names of such two (2) highest candidates shall be certified for places on the ballot of the second primary, unless the said candidates shall agree in writing to cast lots for such nomination. In case the second and third highest candidates in that race shall be tied and no one has a majority the provisions of Section 181 [art. 13.03] shall govern. Should a tie vote result from any contest in the second primary election, then the executive committee shall provide for the casting of lots in the presence of said candidates, and that candidate who shall be successful by lot shall be certified as the nominee for such office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 204.]

#### Art. 13.26a. Withdrawal of Candidate in Second Primary

Any candidate whose name is to appear on a second primary ballot may withdraw as a candidate by filing with the chairman of the state executive committee in the case of a state or district office, and with the chairman of the county executive committee in the case of a county or precinct office, not later than twenty days prior to the day of the election, a signed request, duly acknowledged by him, that his name not be printed on the ballot at such election. If one of the candidates withdraws, the remaining of the two highest candidates shall be

certified as the nominee and a runoff election for nomination to that office shall not be held.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 95; Acts 1967, 60th Leg., p. 1916, ch. 723, § 54, eff. Aug. 28, 1967.]

**Art. 13.27. Canvass by State Executive Committee**

(a) The chairman of the executive committee for each county shall immediately prepare, within twenty-four hours after the vote in the primary election has been canvassed by the county executive committee as provided in Section 202 of this code,<sup>1</sup> a tabulated statement of the votes cast in his county for each candidate for each nomination for a state, district, county or precinct office, and of those cast for county chairman and precinct chairman, and within that twenty-four-hour period mail such statement as to a state or district office, in a sealed envelope by registered or certified letter to the chairman of the state executive committee, who shall present the same to the state executive committee as herein provided.

(b) On the second Tuesday following the day of the general primary in May, the state executive committee shall meet at a place selected at the meeting held on the second Monday in March preceding, and shall open and canvass the returns of the election as to candidates for state and district offices, as certified by the various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. In the event any candidate for a district office received in the general primary the necessary vote to nominate, within twenty days after the canvass the chairman of the state executive committee shall certify the name of such candidate to the Secretary of State, to be printed upon the official ballot for the general election as a candidate of the party for the office to which he was nominated. If such returns show that for any state or district office no candidate received a majority of all the votes cast for all candidates for such office, the committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority and shall certify same to the county chairmen of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the first Saturday in June thereafter.

(c) Not later than the third Saturday in June of each election year, the state executive committee shall meet at the call of the chairman fixing the date of the meeting, at a place selected at the meeting held on the second Tuesday following the day of the general primary, and shall open and canvass the returns of the second primary election as to candidates for state and district offices as certified by the various county chairmen to the state chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by

the state committee and certified by its chairman. Within twenty days thereafter, the chairman of the state executive committee shall certify to the Secretary of State, the names of the district candidates receiving the highest vote, to be placed on the general election ballot.

(d) Within twenty days after the date of each canvass, the chairman of the state executive committee shall forward a copy of the tabulated statement prepared by the committee to the Secretary of State, who shall file such statement in the records of his office.

[Acts 1951, 52nd Leg., p. 1097, art. 205; Acts 1959, 56th Leg., p. 335, ch. 165, § 7; Acts 1963, 58th Leg., p. 1017, ch. 424, § 96; Acts 1967, 60th Leg., p. 1916, ch. 723, § 55, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.24.

**Art. 13.28. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 13.29. To Publish Nominees**

The County Clerk, under his official hand and seal, shall cause the names of the candidates who have received the necessary vote to nominate as directed by the county executive committee and as certified by the chairman of said committee, for each office, to be published in some newspaper published in the county, if any there be, but if there be no newspaper published in the county, then he shall post a list of such names in at least five (5) public places in the county, one (1) of which notices shall be posted at the courthouse door. Provided, that if a contest for the nomination for any county or precinct office in the county be pending, posting and/or publication as to that office shall be deferred until the contest is finally determined after which, he shall post or publish as to that particular office as hereinabove set out.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 207.]

**Art. 13.30. Contest of Primary Nominations**

(1) The district court shall have original and exclusive jurisdiction of all contests for nominations growing out of primary elections.

(2) The venue of suits or contests between candidates for nomination for State office and United States Senator and Congressman-at-large is hereby fixed in the District Court of Travis County, Texas, unless the parties shall agree upon some other county. The venue of suits between candidates involving party nomination for district offices and United States Congressman shall be in the county in which the fraud or illegality is alleged to have occurred, or in the county that may be agreed upon by the parties. The venue of suits involving party nominations for precinct or county offices shall be fixed as in the county where such cause of action originated. Provided, that nothing herein shall be construed to prohibit the district court in the county where any such contest may be filed from changing the venue to some other adjacent county, upon showing of adequate cause, and in the event of any such change of venue, the district court of the county to which

such contest is transferred shall be governed by all the provisions of this Act.

(3) Any candidate desiring to contest the result of any primary election in which he was a candidate shall file his suit in the district court within ten days from the date of canvass of the results of the election by the state executive committee in the case of a state-wide office or a district office in a district which includes territory situated in more than one county, and within ten days from the date of canvass by the county executive committee in the case of a county or precinct office or a district office in a district which consists of only one county or part of one county. Process with a true copy of the petition or complaint attached thereto shall be served upon the opposite party as in other civil suits, except that the return day thereof shall be fixed by the district judge. If the contestee cannot be found within the county in which the contest is filed, service may be had upon the agent or attorney of the contestee, or by leaving the process with some person over the age of sixteen years at the usual place of abode or business of the contestee, or his last address. If service cannot be effected within three days in any of the above methods, service upon the contestee may be had by serving the county clerk in the county where suit is filed, and any candidate who files for a place on the ballot in the primary election shall thereby appoint such county clerk as his agent to receive service for him under the circumstances above set forth. If a candidate for a district office in a district which includes territory situated in more than one county files a contest in one or more counties without filing a contest in every county having territory within the district, the contestee shall have five days from the date of first service of process on him in the suit or suits filed by the contestant, in which to file a contest in such other counties of the district as he may desire to do. In a suit filed by a contestee under the authorization of the preceding sentence, the parties shall be designated, and the suit shall proceed, in the same manner as original contests filed under this Section. Nothing herein shall be construed to prevent the contestee in a pending suit from himself filing a contest as a contestant, within ten days from the applicable date of canvass, in the district court of any county having venue of the contest preceding.

(4) The filing of the suit shall be immediately called to the attention of the district judge by the clerk of said court. If the district court be then in session, the judge thereof shall set the said contest for trial at a date not more than ten (10) days from the date of the filing of said contest. If the district court be not in session at said time, the judge thereof shall order a special term of said court to be convened not later than ten (10) days from the filing of such contest for the hearing of same, and in either case, the said contest shall have precedence over all other matters.

(5) For good cause shown, supported by affidavit of either party, the trial of said contest, in the

discretion of the court, may be postponed one (1) time for not exceeding five (5) days.

(6) The contestee shall file his answer within five (5) days from the filing of such suit, but either party, or both, shall have the right to amend before announcing ready for trial and set up additional causes of action or matters of defense, as the case may be. Any further changes in the pleadings shall be within the sound discretion of the court.

(7) In the trial of such cause the trial judge shall have wide discretion as to matters of pleading, procedure and admissibility of evidence, the purpose of this Section being to subserve the ends of justice, rather than strict compliance with technical rules of pleading, procedure, and evidence.

(8) The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities proper to determine the issue raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest.

(9) Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of such election contest, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof, illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake.

(10) In addition to the powers and authority heretofore granted to the district courts, where fraud or illegality is charged, if such charges of fraud or illegality be supported by some evidence, or by affidavit of reputable persons, and the ends of justice seem to require it, the court shall have authority to unseal and reopen the ballot boxes to determine controverted issues, and the court may recount, or under its direction cause to be recounted, the ballots cast in any or all precincts of the county to determine the true result of such election. In all such cases in which a reopening of ballot boxes is ordered, the court shall exercise all due diligence to preserve the secrecy of the ballots, and upon completion of such recount, the said ballot boxes with their original contents shall be resealed and redelivered to the county clerk.

(11) When the District Court shall have decided the contest, unless notice of appeal to the Court of

Civil Appeals be given and an appeal bond filed within five (5) days, the said Court shall certify its findings to the officers charged with the duty of providing the official ballot for the ensuing election for observance in the preparation of the ballot for that particular party. The trial Court shall further fix a time within which the record in the trial Court shall be filed in the appellate Court, and make all such other orders in the cause as in his discretion may be necessary and expedient in order to expedite such appeal.

(12) In all contests for party nominations filed in the district courts under authority of this Act, either party thereto may appeal to the Court of Civil Appeals for that particular Supreme Judicial district, which appeal shall be advanced upon the docket of said court and shall have precedence over all other cases. Provided, that no appeal in such cases shall be dismissed as moot merely because of possible interference with the printing of the official ballot unless the appellant has been guilty of negligence in perfecting and prosecuting such appeal, but such appellate court shall retain jurisdiction of such appeal and expeditiously dispose of same. Upon decision of the appeal by the Court of Civil Appeals no motion for rehearing shall be filed except with approval of the court given within three (3) days after such decision. The Supreme Court of Texas shall have no jurisdiction to review any election contest filed under this Act by writ of error, certified question, or any other manner.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 208; Acts 1967, 60th Leg., p. 1917, ch. 723, § 55a, eff. Aug. 28, 1967.]

#### Art. 13.31. Name Printed on Ballot

After the names of the successful candidates have been published or posted in compliance with Section 207 [art. 13.29], and all contests, if any, have been determined, the county clerk shall cause the names of all the nominees to be printed on the official ballot in the column for the ticket of that party. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 209.]

#### Art. 13.32. To Post Names of Candidates

Each county clerk shall post in a conspicuous place in his office, for the inspection of the public the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten (10) days before he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 210.]

#### Art. 13.33. Referendum on Platform Demands

No political party in this state which is required to nominate its candidates by primary election shall, in convention assembled, place in the platform or resolutions of the party any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote at the general primary election of such

party next preceding the state convention and shall have been endorsed by a majority of all the votes cast in such primary election. The state executive committee may submit, at the general primary election, any demand for specific legislation on any subject, or any other matter, which may be proposed for inclusion in the platform or resolutions of the party, and upon petition of five per cent of the voters of the party, as shown by the total number of votes cast for Governor at the last preceding general primary, the state executive committee shall submit any such question or questions to the voters at the next general primary.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 211; Acts 1963, 58th Leg., p. 1017, ch. 424, § 97.]

#### Art. 13.34. Precinct, County, and Senatorial District Conventions

(a) On the first Saturday after the general primary election day in each election year, there shall be held in each county a county convention of each party holding primary elections; provided, however, that except as provided in the last sentence of this subsection, whenever the territory of a county forms all or part of more than one state senatorial district, in lieu of the county convention in such county there shall be held on the day stated above a convention (hereinafter called senatorial district convention) in each part of the county constituting all or part of each of such senatorial districts. Each county convention or senatorial district convention shall be composed of one delegate from each election precinct in such county or senatorial district or part thereof for each twenty-five votes, or major fraction thereof, cast for the party's candidate for Governor in such precinct at the last preceding general election, which delegate or delegates shall be elected by the qualified members of the party in each precinct at precinct conventions to be held on the general primary election day. In case at the preceding general election there were cast for such candidate for Governor less than twenty-five votes in any precinct, then all such precincts shall elect one delegate. Where the boundaries of an election precinct have been changed or a new precinct formed since the last general election, the county executive committee shall allocate to each such precinct the number of delegates to be elected in that precinct, and may use any fair and reasonable method for making the allocation. However, notwithstanding the provisions of this subsection, in any county which forms all or part of two senatorial districts, the less populous of which has a population of less than 50,000 persons, according to the last preceding federal census, there shall be held one county convention in lieu of the two senatorial district conventions which would otherwise be required by this subsection.

(b) At the meeting of the state executive committee provided for in Section 190 of this code,<sup>1</sup> the committee shall set the ratio for the selection of delegates to the state conventions of that party for that election year, which ratio shall be one delegate for not less than each three hundred votes and not

more than each six hundred votes cast for the party's candidate for Governor in each county or in each part of a county forming all or part of a state senatorial district; and the state chairman shall notify the county chairman of each county and the temporary chairman of each senatorial district convention of the ratio set for that year's conventions within ten days after the date of such meeting. Each county convention or senatorial district convention shall elect one delegate for each such number of votes, or major fraction thereof, as set by the state committee. If at the preceding general election there were cast for the party's candidate for Governor in the territory represented at the convention less than the number set by the state committee, then the convention shall elect one delegate. In the state conventions each county or each part of a county which holds a senatorial district convention shall be entitled to one vote for each delegate which it is entitled to elect.

The delegates so elected shall be delegates for all state conventions held throughout the remainder of the year and such of them as may attend such state conventions shall cast the votes for the territory which they represent in such conventions.

(c) The qualified members of the party in each election precinct of the county shall assemble on the date named and shall be called to order by the precinct chairman, or in his absence by any qualified member of the party residing within the precinct. Before transacting any business, the precinct chairman shall cause to be made a list of all qualified members of the party present. The name of no person shall be entered upon the list nor shall he be permitted to vote, be present at, or participate in the business of the convention until it is made to appear that he is a qualified voter in the precinct, from a certified list of the qualified voters, the same as is required in conducting a general election, and that he has qualified as a member of the party as provided in Section 179a of this code.<sup>2</sup> The precinct convention shall elect from among those present and qualified a permanent chairman and such other officers as may be necessary to conduct its business. The chairman of the convention shall possess all the power and authority that is given to election judges by the provisions of this code. After the convention is organized it shall elect its delegates to the county convention or senatorial district convention, as the case may be, and transact such other business as may properly come before it. The only qualifications for serving as a delegate to a county or senatorial district convention, or to a state convention, are that the person shall be a qualified voter residing within the territory which he is selected to represent and shall be affiliated with the party as prescribed in Section 179a of this code. Such of the delegates selected at the precinct convention as may attend the county or senatorial district convention shall cast the number of votes equal to the full delegate strength of the precinct. The officers of the precinct convention shall keep a written record of its

proceedings, including the list of persons present and a list of delegates elected to the county or senatorial district convention, with the residence address of each delegate shown thereon, which shall constitute the returns from the convention. The record, and a copy thereof, shall be signed officially, sealed up and safely transmitted in person or by registered mail by the permanent chairman of the precinct convention within three days after the precinct convention to the county clerk of the county, who shall affix his file mark thereto and who shall promptly deliver the original copy of such return to the chairman of the county executive committee, and the return filed with the county clerk shall be open to public inspection during the regular office hours.

(d) The chairman of the county executive committee shall deliver the lists of delegates named by the precinct conventions in the county to the county convention, or shall deliver the appropriate precinct lists to each of the temporary chairmen of the senatorial district conventions to be held within the county, as the case may be, and these lists shall constitute the temporary roll of those selected as delegates to the county convention or senatorial district conventions and only delegates on such temporary roll shall be permitted to vote in the temporary organization of the convention. No person shall be permitted to hold a proxy or vote a proxy at a county convention or senatorial district convention. The county chairman shall be the temporary chairman of the county convention. The senatorial district committeeman selected as provided in Section 196a of this code shall be the temporary chairman of the senatorial district convention for a part of a county which is joined with other territory in a senatorial district, and the chairman of the district executive committee selected as provided in Section 196a of this code<sup>3</sup> shall be the temporary chairman in a district composed of only a part of one county. After being called to order by the temporary chairman, the convention shall elect a permanent chairman and such other officers as may be necessary to conduct its business. Immediately upon the adjournment of each such county or senatorial district convention, the permanent chairman thereof shall make out a certified list of the delegates chosen, together with a copy of all resolutions adopted by the convention, and shall sign the same, the permanent secretary of such convention attesting his signature, and within five days after the convention shall forward such certified list, resolutions and copies of each thereof by sealed registered or certified letter to the Secretary of State in Austin, Texas, who shall affix his file mark thereon and who shall deliver the originals thereof to the chairman of the state executive committee, prior to any state convention. The state chairman shall call a meeting of the state executive committee, which shall, at the meeting, prepare a complete list of the delegates elected to the state conventions by each county convention or senatorial district convention as certified by the Secretary of State. The chairman shall then present the certified list to any state conven-

tion, at any time prior to its beginning, and such lists shall constitute the temporary roll of those selected as delegates to such conventions, and only delegates on such temporary roll shall be permitted to vote in the temporary organization of any such state convention. No person shall be permitted to hold a proxy or vote a proxy at a state convention from more than one county.

(e) The county executive committee in its meeting on the third Monday in March preceding the general primary, provided for in Section 195 of this code,<sup>4</sup> or, upon its failure to act, the county chairman shall determine the hour and place at which the precinct conventions shall be held on primary election day. The time for convening of the precinct convention in each precinct must be set between the hours of two o'clock p. m. and nine o'clock p. m. The county chairman shall then be required to post a copy of this order on a bulletin board at the county courthouse and file a copy of the same in the office of the county clerk, where it shall be open to public inspection. This notice shall be posted and filed by the county chairman at least ten days prior to the holding of the precinct conventions. Also at this meeting the county executive committee, or, upon its failure to act, the county chairman, shall decide the hour and place at which the county convention shall be held, and the county chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk, at least ten days prior to the date of the county convention. When senatorial district conventions are to be held in a county in lieu of the county convention, at this meeting the precinct chairmen for the election precincts which will select delegates to each senatorial district convention, or upon their failure to act, the temporary chairman of the convention, shall decide the hour and place at which each respective senatorial district convention shall be held, and each temporary chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk, at least ten days prior to the date of the convention. Should the above-designated persons fail to post such orders and file such notices, then any member of the county executive committee who was entitled to participate in the decision may post such orders and file such notices and such shall constitute the orders and notices required herein. Should more than one member of the county executive committee post such orders and file such notices, then the first posting and filing in point of time shall prevail.

(f) Representatives of newspapers, wire news services, and radio and television stations shall have the right to attend the precinct conventions, the county conventions, the senatorial district conventions, and the state conventions for the purpose of reporting the proceedings thereof.

(g) All nominees for the Legislature or the United States Congress and all state representatives, state senators and members of Congress shall be entitled

to admission to the state conventions of their party, but unless elected as a delegate they shall not be entitled to vote or otherwise participate in the affairs of the convention.

(h) No person shall be ineligible to serve as a delegate to any county, senatorial district, state or national convention of any political party by reason of his holding any public office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 212; Acts 1957, 55th Leg., p. 430, ch. 206, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 8; Acts 1962, 57th Leg., 3rd C.S., p. 157, ch. 53, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 98; Acts 1967, 60th Leg., p. 1918, ch. 723, § 56, eff. Aug. 28, 1967; Acts 1969, p. 2404, ch. 809, § 1, eff. Sept. 1, 1969; Acts 1969, p. 2662, ch. 878, § 34, eff. Sept. 1, 1969.]

<sup>1</sup> Article 13.12.

<sup>2</sup> Article 13.01a.

<sup>3</sup> Article 13.18a.

<sup>4</sup> Article 13.17.

#### Art. 13.34a. Refusing Employee Privilege of Attending Precinct Convention

It shall be unlawful for any employer to refuse to an employee the privilege of attending a precinct convention of a political party with which the employee is affiliated or is eligible to affiliate. An employer shall not be required to compensate an employee for the time the employee is absent for the purpose of attending a precinct convention, but the employee shall not be subjected to any other penalty or deduction of wages because of the exercise of such privilege. Any employer who violates any provision of this section shall be fined not to exceed five hundred dollars.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 99.]

#### Art. 13.35. Place for State Convention

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall decide upon the hour and place where the State convention of the party shall be held on the third Tuesday in September, 1960, and each two (2) years thereafter. The chairman of the State executive committee shall file with the Secretary of State a notice of the hour and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 213; Acts 1959, 56th Leg., p. 335, ch. 165, § 9.]

#### Art. 13.36. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963

#### Art. 13.37. State Convention to Canvass

The State convention shall canvass the vote cast in the entire State for each candidate for each State office as shown by the statement thereof presented to it by the State committee, and shall declare the candidate for each State office who has received a majority of votes cast for all candidates for such office in the first primary election, if any candidate receives a majority of all the votes cast for all the

candidates for such office at said primary election, and if no candidate received such majority, then it shall declare the candidate who received a majority of all votes cast for such office at the second primary election, the nominee of the party for such office; and the chairman and the secretary of the State convention shall forthwith certify all such nominations to the Secretary of State. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 215.]

#### Art. 13.38. State Convention

The state convention to announce a platform of principles and to announce nominations for Governor and other state offices, held by a political party making nominations by primary election, shall meet on the third Tuesday in September of each even-numbered year at such place as may be determined by the state executive committee as provided in Section 213 of this Code,<sup>1</sup> and shall remain in session from day to day until all nominations are announced and the work of the convention is finished. The convention shall elect a chairman and a vice-chairman of the state executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the state, one of whom shall be a man and the other a woman, the members of the committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold office until his successor is elected; and, in case of a vacancy, a majority of the members of the committee shall fill the vacancy by electing some eligible person thereto, but such person shall be of the same sex as the vacating member and from the same senatorial district.

At any meeting of the state executive committee a person cannot hold a proxy or participate in such meeting unless he is a resident of the same senatorial district as the member giving the proxy, and no person shall be permitted to hold or vote more than one proxy.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 216; Acts 1963, 58th Leg., p. 1017, ch. 424, § 100.]

<sup>1</sup> Article 13.35.

#### Art. 13.39. Certificate of Nomination

Every certificate of nomination made by the permanent chairman of the state convention, or by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 217; Acts 1967, 60th Leg., p. 1921, ch. 723, § 57, eff. Aug. 28, 1967.]

#### Art. 13.40. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967

#### Art. 13.41. Mandamus

Any executive committee or committeeman or primary officer or other person charged under any provision of this code with any duty relative to the holding of the primary election, or the canvassing,

determination or declaration of the result thereof, or the holding of any party convention, may be compelled by mandamus to perform the same in accordance with the provisions of this code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 218; Acts 1967, 60th Leg., p. 1921, ch. 723, § 58, eff. Aug. 28, 1967.]

#### Art. 13.42. Spirit of Law

No immaterial error made by any officer of a primary election, or any immaterial violation of the primary election laws by an elector, shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 219.]

#### Art. 13.43. Contest of primary

Except for a place on party tickets for public elective offices, all contests within a political party shall be decided by the State, district, or county executive committee, as the nature of the office may require each such committee to retain all such powers and authority now conferred by law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 220.]

#### Art. 13.43a. Contests for Office of Precinct Chairman or County Chairman

Notwithstanding any other provision of this Code, and particularly notwithstanding Section 220<sup>1</sup> thereof, the district courts of this state are vested hereby with jurisdiction to hear and determine election contests relative to the party offices of precinct chairman and county chairman, the same as though it were a contest for a place on a party ticket for public office.

[Acts 1957, 55th Leg., p. 545, ch. 254, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 101.]

<sup>1</sup> Article 13.43.

#### Art. 13.43b. Party Rules

Subd. 1. On a date no later than 30 days prior to the first precinct convention to be held in 1972, each political party with a State-wide organization which made any nomination for the 1970 general election or plans to make any nomination for the 1972 general election shall file with the Secretary of State a set of specific, detailed, and written party rules for the conduct of its conventions, executive meetings, and any other party meetings.

Subd. 2. The rules shall state, or adopt by reference, the rules of parliamentary procedure which govern the conduct of the party's conventions and meetings from the precinct level through the State level, including rules on quorums, methods by which votes shall be cast and counted, the operation of committees, the appointment and duties of convention committees, presentation of delegate nominations, presentation of resolutions and other matters for consideration by a convention, and the method of selecting presidential elector candidates. Further, the rules shall provide for the nomination, election and formulae for representative apportionment within the State of all party officials, convention

delegates and alternates, and convention officials, except for those party officials whose election is presently provided by statute. Any formulae for apportionment adopted in the rules of any party must be based upon relative population or party strength within participating units, or both. The rules must provide for the periodic and timely publicizing of such rules, the processes and procedures by which the party rules and procedures must be adopted and amended, and any other matters within the discretion of the party. They may not conflict with any statutory prescription or prohibition, and they need not embrace matters which are regulated by statute.

Subd. 3. The chairman of the State Executive Committee of the party is responsible for filing a copy of the rules with the Secretary of State, but any member of the State Executive Committee may file the rules if the chairman fails to do so. The rules must be certified by the State chairman or by two other members of the State committee as having been adopted at a State Convention of the party, with the date and place of holding the convention shown in the certificate, except that temporary rules for 1972 may be adopted by the State Executive Committee of the party subject to action by the next State Convention as provided in Subdivision 6. These party rules shall be published and made available through State party headquarters to any interested person on request. Such rules may provide for amendment by action of the State Party Executive Committee.

Subd. 4. The rules may be changed only by action of a State Convention. When any change is made, a certified copy of the changes shall be filed with the Secretary of State, in the manner described in Subdivision 3, not later than 30 days following their adoption.

Subd. 5. The rules as filed with the Secretary of State shall govern the conduct of the party's conventions and the meetings of its executive committees. Observance of a rule may be enforced through mandamus proceedings as provided in Section 218 of this code and Chapter 723, Acts of the 60th Legislature, 1967 (Article 1735a, Vernon's Texas Civil Statutes), the same as if the rule were embraced in this code.

Subd. 6. If on January 1 of a year in which a general election is held, a party which had nominees on the ballot at either of the last three general elections has not filed a set of rules in accordance with this section, the Secretary of State shall give written notice to the State chairman of the party within 15 days thereafter, informing him that no nominee of the party will be placed on the ballot for the general election that year unless the rules are filed not later than 30 days prior to the first precinct convention to be held that year, provided that for 1972, the State Executive Committee of the party may adopt temporary rules to be ratified in accordance with this subdivision. Any duly constituted, properly representative committee of the party, on

authorization of the State chairman or a majority of the State Executive Committee, may draft temporary rules to be put into effect by a majority vote of the State Executive Committee. These temporary rules must be submitted, with advance publicity preceding their presentation, as an item of business on the official agenda of the party's next State Convention for debate, amendment and permanent ratification. The Secretary of State shall notify each county clerk, not later than the date of the general primary election that year, of any such political party which has failed to comply with the requirements of this section. Neither the Secretary of State nor any county clerk may accept a certification of nominations made by a defaulting party for the general election that year, and no nominee of that party may be placed on the ballot for the election.

[Acts 1971, 62nd Leg., p. 1947, ch. 589, eff. Aug. 30, 1971.]

#### Art. 13.44. Parties of Ten Thousand (10,000) and Less Than Two Hundred Thousand (200,000)

The provisions of Articles 2980,<sup>1</sup> 3008,<sup>2</sup> and 3012,<sup>3</sup> Revised Civil Statutes of Texas, 1925, as amended by this Act, relative to the form, numbering and secrecy of the ballot, as well as the procedure involving the selection of the ballot and the removal of the detachable stub, shall apply to all primary elections as well as those held under or by authority of Chapter 467, Acts, Second Called Session, Forty-fourth Legislature, as amended,<sup>4</sup> except as provided in Section 7 hereof.<sup>5</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 221.]

<sup>1</sup> Article 6.05.

<sup>2</sup> Article 8.11.

<sup>3</sup> Article 8.15.

<sup>4</sup> Penal Auxiliary Laws, arts. 666-1 et seq., 667-1 et seq.

<sup>5</sup> See art. 7.17 of this Code.

#### Art. 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor

Parties Receiving More Than Two Percent of Vote for Governor

Subd. 1. Beginning with the year 1976, any political party whose nominee for Governor in the last preceding gubernatorial general election received as many as two percent but not more than 20 percent of the total votes cast for Governor must nominate its candidates for the general election by conventions as provided in Sections 224 and 225 of this code.<sup>1</sup> In the year 1974, a party whose candidate for Governor received as many as two percent but less than 20 percent of the total votes cast for Governor in the general election held in 1972 may make its nominations by primary elections or by conventions. The state executive committee of a party which has a choice as to the method of nomination in 1974 shall decide, and by resolution declare, whether the party nominations will be made by conventions or by primary elections, and shall certify their decision to the Secretary of State not later than 12 months before the 1974 general election.

Parties Receiving Less Than Two Percent of Vote for Governor

Subd. 2. Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election, may also nominate candidates by conventions as provided in Sections 224 and 225,<sup>2</sup> but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 20 days after the date for holding the party's state convention, the list of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,<sup>3</sup> signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition. To each person who signs the petition there shall be administered the following oath, which shall be reduced to writing and attached to the petition: "I know the contents of the foregoing petition, requesting that the names of the nominees of the \_\_\_\_\_ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party." The petition may be in multiple parts. One certificate of the officer administering the oath may be so made as to apply to all to whom it was administered. The petition may not be circulated for signatures until after the date set by Section 181<sup>4</sup> of this code for the general primary election. Any signatures obtained on or before that date are void. Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500.

The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,<sup>5</sup> he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements.

[Acts 1959, 56th Leg., p. 335, ch. 165, § 11; Acts 1963, 58th Leg., p. 1017, ch. 424, § 102; Acts 1967, 60th Leg., p. 1921, ch. 723, § 59, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 35, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1409, ch. 542, § 6, eff. Aug. 27, 1973.]

<sup>1</sup> Articles 13.47 and 13.48.

<sup>2</sup> Articles 13.47 and 13.48.

<sup>3</sup> Articles 13.45a and 13.47.

<sup>4</sup> Article 13.03.

<sup>5</sup> Article 1.03.

**Art. 13.45a. Regulation of Party Affairs and Conventions**

Party Holding Primary Elections

Subd. 1. If a political party whose nominee for Governor in the last preceding general election received less than two hundred thousand votes has chosen to make its nominations by the primary election method, the management of its party affairs and the conduct of its conventions during that election year shall be subject to the provisions of this code relating to the affairs and conventions of parties which are required to hold primaries.

Party Not Holding Primary Elections

Subd. 2. The management of party affairs and the conduct of conventions of political parties which are making nominations by the convention method are not subject to the provisions of Sections 196, 196a, 196b, 212, 213, 215, and 216 of this code.<sup>1</sup> Except as to matters regulated in this code by express provisions applying to such parties, each such party has authority to regulate its affairs and convention procedures.

Time and Place of Precinct and County Conventions

Subd. 3. The county executive committee of each political party which is making nominations by the convention method shall determine, at a meeting held at least twenty days before the date of the precinct conventions, the hour and place of holding each precinct convention in such county, as well as the hour and place of holding the county convention. Should the county executive committee fail to do so, it shall be the duty of the county chairman to make such determination. It shall be the duty of the county chairman to post a notice of the hours and places of holding the conventions on a bulletin board at the county courthouse and to file a copy thereof in the office of the county clerk at least ten days prior to the precinct conventions. The notice filed with the county clerk shall be open to inspection by the public during office hours of the clerk. Failure of the county chairman to post or to file the above

notice as provided herein shall make such chairman ineligible to be a delegate or alternate delegate, or to hold or vote a proxy at the next succeeding county, district and state conventions of the party.

Should the county chairman fail to file with the county clerk a notice of the hour and place of holding the precinct convention in any precinct, then any qualified voter, resident in such precinct, may file with the county clerk a notice of the hour and place of holding such precinct convention, and such shall constitute the legal hour and place therefor. Should more than one such qualified voter file such notice, then the first filing in point of time shall prevail. A certificate of the county clerk as to the filing or nonfiling of any notice provided in this section shall be conclusive.

Neither the county chairman nor the county executive committee shall appoint any precinct chairman during that period of time subsequent to the posting and filing of notices for the precinct conventions and prior to the time of holding such precinct conventions. Nothing herein, however, shall prevent qualified voters of a precinct having no chairman from meeting, electing their own chairman and holding a precinct convention of such party, but if an hour and place therefor has been designated in either of the methods provided above, then the convention shall be held at such hour and place.

The county convention of any such party shall be held in a public place at the county seat.

#### Precinct Convention Lists of Certain Parties

Subd. 4. At each precinct convention of a party subject to the provisions of Subdivision 2 of Section 222 of this code,<sup>2</sup> the precinct chairman shall serve as the temporary chairman of the convention until a permanent chairman is elected. The temporary chairman shall cause a list to be made of the names of all persons attending the convention and participating therein, together with the address (including street address or post office address) and registration certificate number of each participant. Within three days after the precinct convention, he shall officially sign and certify to the list and shall transmit one signed, certified copy to the chairman of the state executive committee of the party, and shall file another signed, certified copy in the office of the county clerk of the county wherein the precinct is situated.

[Acts 1967, 60th Leg., p. 1922, ch. 723, § 60, eff. Aug. 28, 1967.]

<sup>1</sup> Articles 13.18, 13.18a, 13.18b, 13.34, 13.35, 13.37 and 13.38.  
<sup>2</sup> Article 13.45.

#### Art. 13.46. State Committee to Determine Mode of Nomination

The state committee of a political party which is not required by law to make nominations by primary election shall decide, and by resolution declare, whether the party nominations will be made by conventions or by primary elections, and shall certify

their decision to the Secretary of State not later than twelve months before the general election. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 223; Acts 1959, 56th Leg., p. 335, ch. 165, § 12; Acts 1963, 58th Leg., p. 1017, ch. 424, § 102.]

#### Art. 13.47. Conventions of Parties Not Required to Hold Primary

Political parties which are not required by law to make nominations by primary election may make nominations by conventions as provided herein.

Nominations for statewide offices shall be made at a state convention, which shall be held on the second Saturday in June of the election year, and which shall be composed of delegates selected in the various counties at county conventions held on the second Saturday in May. The county conventions shall be composed of delegates from the general election precincts of such counties elected therein at precinct conventions held in such precincts on the first Saturday in May.

Nominations for district offices of districts composed of more than one county or part thereof shall be made at district conventions held on the third Saturday in May of the election year, composed of delegates elected thereto from the counties having territory within the district, at the county conventions held on the second Saturday in May.

Nominations for county and precinct offices and for district offices of districts composed of only one county or part of one county shall be made at the county conventions held on the second Saturday in May.

The state executive committee of each party shall determine the formula by which the number of delegates to the county, district, and state conventions of that party shall be governed, and shall also formulate such rules as it deems desirable with respect to participation of delegates at a county convention in the nomination of candidates for precinct offices and for district offices of districts composed of only a part of the county, and in the election of delegates to a district convention where only a part of the county is included in the district. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 224; Acts 1959, 56th Leg., p. 335, ch. 165, § 13; Acts 1963, 58th Leg., p. 1017, ch. 424, § 102; Acts 1967, 60th Leg., p. 1923, ch. 723, § 61, eff. Aug. 28, 1967.]

#### Art. 13.47a. Application for Nomination; Affidavit of Intent to Run; Filing

Sec. 1. No person shall be nominated by any state, district, or county convention held pursuant to Articles 222, 223 and 224<sup>1</sup> of this Code unless he has filed with the chairman of the appropriate executive committee an application requesting that his name be placed before the convention as a candidate for nomination. The application shall conform to the requirements of Article 190 of this Code (Article 13.12, Election Code, Vernon's Texas Civil Statutes), and shall be filed in the same manner and within the time prescribed by that Article, except that it shall request that the candidate's name be placed before

the convention instead of requesting that his name be placed on the general primary ballot.

Sec. 2. A person who has been nominated by a convention may decline the nomination, but he shall not be eligible for nomination by that party to any other office to be voted on at the same election except as a candidate for an unexpired term where the vacancy in office occurred subsequent to the date of the convention at which he was originally nominated.

Sec. 3. As a condition precedent to having a candidate's name printed on the official ballot under Article 227 or Article 230<sup>2</sup> of this Code, there must, in addition to the requirements of those two (2) Articles, be filed, with the person with whom the written application must, thereunder, be filed, an affidavit, duly acknowledged by the person desiring his name to be placed on the ballot stating his occupation, county of residence, post office address, age, and the office for which he intends to run. The affidavit must be filed at the same time requests under Article 190 of this Code must be filed.

Sec. 4. The requirements of Sections 1 and 3 shall not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing applications for a place on a primary election ballot as prescribed in Paragraph 2 of Section 190 of this Code.<sup>3</sup> The requirements of Section 3 shall not apply to independent candidates for any office for which the filing deadline in a primary election is extended under the provisions of Paragraph 2a of Section 190 of this Code.

[Acts 1961, 57th Leg., p. 173, ch. 90, § 1; Acts 1967, 60th Leg., p. 1924, ch. 723, § 61a, eff. Aug. 28, 1967.]

<sup>1</sup> Articles 13.45, 13.46 and 13.47.

<sup>2</sup> Articles 13.50 and 13.53.

<sup>3</sup> Article 13.12.

#### Art. 13.48. Nominations Certified

Nominations so made by a state convention shall be certified by the chairman of the state executive committee of such party to the Secretary of State. Nominations made by a district convention shall be certified by the chairman of the district executive committee to the Secretary of State. Nominations made by a county convention for county and precinct offices shall be certified by the chairman of the county executive committee to the county clerk, and nominations for district offices shall be certified by said chairman to the Secretary of State. Nominations by party conventions must be certified to the proper officer within twenty days after the date of the convention at which the nomination was made. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 225; Acts 1963, 58th Leg., p. 1017, ch. 424, § 103.]

#### Art. 13.49. Illegal Participation

No person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day.

[Acts 1951, 52nd leg., p. 1097, ch. 492, art. 226.]

#### Art. 13.50. Non-partisan and Independent Candidates

The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within thirty days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed five hundred.

No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election.

The application shall contain the following information with respect to each person signing it: his address and the number of his poll tax receipt or exemption certificate and the county of issuance; or if he is exempt from payment of a poll tax and not required to obtain an exemption certificate, the application shall so state.

Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 227; Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.]

#### Art. 13.51. Oath to Application

To every citizen who signs such application, there shall be administered the following oath, which shall be reduced to writing and attached to such application: "I know the contents of the foregoing application; I have not participated in the general primary election or the runoff primary election of any party which has nominated, at either such election, a candidate for the office for which I desire \_\_\_\_\_ (here insert the name of the candidate) to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 228; Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.]

#### Art. 13.52. Consent to Run

Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state or of the district, as the case may require, and the county judge shall issue his instruction to the county clerk of the county, directing that the name of the candidate in whose favor the application is made shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that any candidate who is required by Section 224a of this Code<sup>1</sup> to file a statement of intent to become an independent candidate must have filed such statement in compliance with the provisions of that section, and any candidate not required to file such statement must file with the Secretary of State or the county judge, as the case may be, his written consent to become a candidate, within thirty days after the second primary election day.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 229; Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.]

<sup>1</sup> Article 13.47a.

#### Art. 13.53. Independent Candidates at City or Town Election

Independent candidates for office at a city or town election may have their names printed upon the official ballot on application signed by qualified voters addressed to the mayor, such application be-

ing in the same form and subject to the same requirements herein prescribed for application to be made to the Secretary of State or the county judge; provided, that in city elections it shall be necessary that the application be signed by qualified voters equaling five per cent of the entire vote cast for mayor at the last municipal election, or by twenty-five qualified voters, whichever is the lesser number; and the application and the candidate's written<sup>1</sup> consent must be filed at least thirty days prior to the election day. Provided further, that if the office is one to which two or more persons are to be elected, the application may be for as many candidates as there are persons to be elected to that office, and a voter may sign applications of candidates for that office in the number that is to be elected; but if he signs the applications of more than the number to be elected, the signature shall be void as to all such applications. And provided further, in elections for a city or town office, it shall not be necessary that independent candidates be nominated, but anyone otherwise qualified may have his name printed upon the official ballot for a particular office by filing his sworn application with the mayor at least thirty days prior to the election day and by paying such filing fees as may be required by statute or by charter provision.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 230; Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.]

<sup>1</sup> So in enrolled bill.

#### Art. 13.54. By Parties without State Organization

Any political party without a State organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor under the provisions of this title by primary elections or by a county convention held on the legal primary election day, which convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of 8:00 a. m. and 10:00 p. m. on the date set by law. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent (3%) of the entire vote cast in such county at the last general election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 231.]

#### Art. 13.55. For City and Town Elections

Each incorporated city or town in this State, whether incorporated under the general or special laws, may make nominations for office in the following manner: in each of said cities and towns there shall be an executive committee for each political party, consisting of a city chairman and one (1) member for each ward in such city or town, and in case such city or town is not divided into wards, for either political or election purposes, then there shall

be selected four (4) members of said committee, in addition to the city chairman. If any city or town shall be divided into wards, for either political or election purposes, or both, then such party executive committee shall consist of one (1) member from each ward and a city chairman of such executive committee. Provided, however, that no city or town in this State shall have a smaller number than four (4) executive committeemen and a chairman of such executive committee. In all cities and towns which now have no executive committee, the county chairman of the party desiring to make nominations in such cities and towns shall appoint an executive committee to serve until the next city election shall be held, and in each city and town in this State in which a political party may desire to make nominations, there shall be held, at least thirty (30) days prior to the regular city election, an election at which there may be nominated by such political party, officers to be elected at the next city election, and at which election there shall be selected the executive committee for such party in said city or town herein provided for, and in all such city primary elections, the provisions of the law relating to primary elections and general elections shall be observed. The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; provided, that upon petition being made to said city or county chairman, signed by twenty-five per cent (25%) of the voters of the party in such city, as shown by the last general State election, requesting that party nominations be made for city officers, then said city executive committee, through an order of its chairman, shall order a primary election or mass convention of the qualified voters of the party, as may be petitioned for by the voters presenting said petition, and it shall thereupon be the duty of said city executive committee to grant such request as shall be contained in such petition, and such primary election or mass convention shall be ordered, and it shall be mandatory upon such city or county chairman to order such election or mass convention to be held within ten (10) days from the time such petition is presented. At such primary election or mass convention a new executive committee shall be selected to serve during the ensuing terms; provided that this law shall not be construed so as to prevent independent candidates for city offices from having their names upon the official ballot, as provided by law. This section shall not repeal the provisions of any charter heretofore or hereafter specially granted to any city in this State. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 232.]

**Art. 13.56. Declination or Death of Nominee; Filling Vacancy in Nomination**

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than twenty days before the day of

the election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments.

(b) If prior to the twentieth day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed not later than twenty days before election day, which certificate shall set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so prior to twenty days before the election because it is unable to agree upon a nominee by majority vote, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election; provided, however, that the certification must be filed not later than twenty days before election day.

(d) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than twenty days before election day, a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot.

(e) If a party nominee dies or declines the nomination or is declared ineligible to be elected, and no one is nominated to fill the vacancy, his name shall be printed on the ballot and the procedure set out in Section 104 of this Code<sup>1</sup> shall be followed.

(f) If an independent candidate dies more than five days before the deadline for filing by independent candidates in that race, his name shall not be printed on the ballot. If he dies after that date, his name shall be printed on the ballot and the procedure set out in Section 104 of this Code shall be followed.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 233; Acts 1963, 56th Leg., p. 1017, ch. 424, § 105; Acts 1967, 60th Leg., pp. 1924, 1925, ch. 723, § 62, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.22.

**Art. 13.57. Party Name**

No new political party shall assume the name of any preexisting party; and the party name printed

on the official ballot shall not consist of more than three words. As used in this section, the term "preexisting party" does not include a political party which is no longer in existence.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 234; Acts 1969, 61st Leg., p. 2662, ch. 878, § 36, eff. Sept. 1., 1969.]

#### Art. 13.58. National Convention

(a) Any political party holding primary elections in an election year during which it desires to elect delegates to a national convention shall hold a state convention at such hour and place as may be designated by the state executive committee of the party, on the second Tuesday following the second primary election date. Such convention shall be composed of delegates duly elected at the county and senatorial district conventions as provided for in Section 212 of this code.<sup>1</sup> The chairman of the state executive committee shall notify the Secretary of State as to the hour and place at which the state convention will be held and shall also mail a copy of such notice to each county chairman and the temporary chairman of each senatorial district convention in the state at least ten days prior to the date of the state convention.

(b) Any political party not holding primary elections which desires to elect delegates to a national convention shall elect such delegates at the state convention provided for in Section 224 of this code.<sup>2</sup> [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 235; Acts 1959, 56th Leg., p. 335, ch. 165, § 14; Acts 1967, 60th Leg., p. 1925, ch. 723, § 63, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.34.

<sup>2</sup> Article 13.47.

#### Art. 13.59. Nominations for Two (2) or More State Offices of Same Classification

That whenever nominations for two (2) or more state offices of the same classification are to be made at the same primary or general election, each such office shall be separately designated on the official ballot used at such primary or general election by numbering the places as "No. 1," "No. 2," "No. 3," etc., and the candidates for each place shall be separately nominated. Such designations shall be made by the State Committee of the political party holding the election. Each candidate for nomination for such offices shall designate in the announcement of his candidacy, and in his request to have his name placed on the official primary ballot, the number of the nomination or place for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. No person shall be a candidate for more than one of such places.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 236.]

### CHAPTER FOURTEEN. LIMITING CAMPAIGN EXPENDITURES

#### Article

14.01. Definitions.

14.02. Appointment of Campaign Manager.

<sup>2</sup> West's Tex.Stats. & Codes—20

#### Article

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#### Art. 14.01. Definitions

As used in this chapter—

(a) "Broadcasting station" is defined as a station engaging in radio or television communications. More specifically, it has the same meaning as in Section 315(f) of the Federal Communications Act of 1934.<sup>1</sup> The term includes a community antenna television system.

(b) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination for an election to any public office which is required by law to be determined by an election.

(c) "Contribution" is defined as any advance, deposit, or transfer of funds, contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or any thing of value to any candidate or political committee involved in an election.

(d) "Expenditures" is defined as any payments made or debts and obligations incurred by a candidate or political committee involved in an election.

(e) "Election" is defined as any election held to nominate or elect a candidate to any public office. It shall also include any election at which a measure is submitted to the people.

(f) "Public office" is defined as any office created by or under authority of the laws of the United States or of this state, that is filled by the voters.

(g) "State office" is defined as any office of the federal or state government which is to be filled by the choice of the voters of the entire state, except presidential electors.

(h) "District office" is defined as any office of the federal or state government, less than state-wide, which is to be filled by the choice of the voters residing in more than one county.

(i) "County office" is defined as any office of the federal, state, or county government which is to be filled by the choice of the voters residing in only one county or less than one county.

(j) "Municipal office" is defined as any office of any incorporated city, town, or village which is to be filled by the choice of the voters.

(k) "Office of a political subdivision" is defined as any office of any political subdivision of this state which is organized as a body politic

and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.

(l) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.

(m) "Person" is defined as an individual, corporation, partnership, labor union, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.

(n) "Political committee" is defined as any group of persons formed to collect contributions or make expenditures in support for or in opposition to a candidate or measure to be on a ballot in a public election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 237; Acts 1963, 58th Leg., p. 1017, ch. 424, § 106; Acts 1973, 63rd Leg., p. 1101, ch. 423, § 2, eff. June 11, 1973.]

<sup>1</sup> 47 U.S.C.A. § 315(f).  
 The 1973 Act, which by §§ 2 to 13 amended various articles of this chapter and art. 3.05(b), provided in §§ 1, 14 to 16:  
 "Sec. 1. This Act shall be styled the Campaign Reporting and Disclosure Act of 1973.  
 "Sec. 14. Nothing in this Act repeals or otherwise affects Article 5428a, Revised Civil Statutes of Texas, 1925, as added by House Bill No. 8, Acts of the 63rd Legislature, Regular Session, 1973.  
 "Sec. 15. All laws in conflict with this Act are hereby repealed to the extent of the conflict only.  
 "Sec. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable."

**Art. 14.02. Appointment of Campaign Manager**

(a) Every candidate for nomination for or election to a state or district office and every political committee in any such election or in an election involving a statewide measure shall designate a campaign manager by written appointment filed with the Secretary of State, and may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the county clerk of said county.

(b) Every candidate for nomination for or election to a county office and every political committee in any such election or in an election involving a county measure shall designate a campaign manager by written appointment to be filed with the county clerk of such county.

(c) Every candidate for nomination for or election to a municipal office or an office of a political subdivision and every political committee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign manager by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate an assistant campaign manager

for each county affected by such candidacy by written appointment to be filed with the county clerk of said county.

(d) Any campaign manager or assistant campaign manager designated as provided in this Section may be removed by the candidate or political committee at any time by the written appointment of a successor filed in the manner provided for the original designations.

(e) No contribution shall be accepted nor any expenditure made by a candidate or political committee until the candidate or political committee has filed the name of its campaign manager with the appropriate authority.

(f) It shall be unlawful for any candidate, political committee, campaign manager, assistant campaign manager or any other person to expend funds from any unlawful contributions.

(g) Nothing in this Act shall be construed to prohibit a candidate from appointing himself as the campaign manager.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 238; Acts 1973, 63rd Leg., p. 1102, ch. 423, § 3, eff. June 11, 1973.]

**Art. 14.03. Purposes of Expenditures**

No candidate, political committee, campaign manager or assistant campaign manager shall himself or by any other person, directly or indirectly, make or authorize any other person to make any campaign expenditure except for the following purposes only, to wit:

(a) For the traveling expenses of the candidate, campaign manager, or assistant campaign managers, or of a secretary for such candidate.

(b) The payment of fees or charges for placing the name of the candidate upon the ballot, and for holding and making returns of the election.

(c) The hire of clerks and stenographers and the cost of clerical and stenographic work.

(d) Telegraph and telephone tolls, postage, freight and express charges.

(e) Printing and stationery.

(f) Procuring and formulating lists of voters, making canvasses of voters, and employing watchers.

(g) Office rent.

(h) Newspaper and other advertising and publicity.

(i) Advertising and holding political meetings, demonstrations, and conventions, and payment of speakers and musicians therefor.

(j) Employing as counsel attorneys licensed in this State and expenses of election contests and recounts.

(k) For the traveling expenses and salaries of all necessary campaign staff in the lawful execution of their duties.

Any campaign expenditure by any candidate or political committee, campaign manager or assistant

campaign manager, except for the above purposes is expressly prohibited and declared to be unlawful. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 239; Acts 1973, 63rd Leg., p. 1103, ch. 423, § 4, eff. June 11, 1973.]

#### Art. 14.04. Campaign Contributions

(a) Except as otherwise prohibited by law, it shall be lawful for any person other than a corporation or a labor union to make campaign contributions to be paid directly to a candidate, political committee, the campaign manager, or assistant campaign manager, such contributions to be used for only those purposes set forth in the Texas Election Code.

(b) It shall be lawful for an individual not acting in concert with any person to expend a sum which shall not in the aggregate exceed One Hundred Dollars (\$100) for postage, or telegraph or telephone tolls, or for costs of any correspondence, or any other lawful purpose out of his own funds to aid or defeat any candidate or measure, where the sum is not to be repaid to him.

(c) It shall be lawful for any individual to contribute his own personal services and personal traveling expenses to aid or defeat any candidate or measure only so long as he either is not compensated or reimbursed for doing so or is compensated or reimbursed only by lawful campaign expenditures.

(d) Except as expressly permitted by Paragraphs (a), (b), and (c) of this Section it shall be unlawful for any person, other than a candidate, his campaign manager or assistant campaign manager, or the campaign manager of a political committee, to make or authorize any campaign expenditure. Except as provided in Paragraphs (a), (b), and (c) of this Section campaign expenditures must be made by the candidate, campaign manager or assistant campaign manager, or the campaign manager of a political committee.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 240; Acts 1973, 63rd Leg., p. 1103, ch. 423, § 5, eff. June 11, 1973.]

#### Art. 14.05. Civil Remedy

(a) Any candidate, campaign manager, assistant campaign manager, or other person, who makes an unlawful campaign contribution or expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name shall appear on the ballot in the next election after such contribution or expenditure is made for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(b) Any candidate, campaign manager, assistant campaign manager, or other person, who makes an unlawful campaign contribution or expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(c) Any candidate, campaign manager, assistant campaign manager, or other person, who makes an unlawful campaign contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful campaign contribution or expenditure.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 241; Acts 1973, 63rd Leg., p. 1104, ch. 423, § 6, eff. June 11, 1973.]

#### Art. 14.06. Criminal Penalty

Any candidate, campaign manager, assistant campaign manager, or other person, who makes an unlawful campaign contribution or expenditure in violation of this chapter shall be fined not less than one hundred dollars nor more than five thousand dollars, or be imprisoned in the penitentiary not less than one nor more than five years, or be both so fined and imprisoned.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 242; Acts 1967, 60th Leg., p. 1925, ch. 723, § 64, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1104, ch. 423, § 7, eff. June 14, 1973.]

#### Art. 14.07. Corporations Not To Contribute

(a) Except to the extent permitted in Article 213 of the Penal Code of Texas, 1925,<sup>1</sup> no corporation shall give, lend or pay any money or other thing of value, or promise to give, lend or pay any money or other thing of value, directly or indirectly, to any candidate, political committee, campaign manager, assistant campaign manager, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate or of aiding or defeating the approval of any political measure submitted to a vote of the people of this state or any subdivision thereof; provided, however, that nothing in this section or in Article 213 of the Penal Code shall prevent the making of a loan or loans to any candidate for campaign purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in due course of business and is not directly or indirectly a contribution.

(b) Any corporation making or promising a gift, loan, or payment to any candidate, political committee, campaign manager, assistant campaign manager, or other person in violation of Subsection (a) of this Section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate or political committee favored by such gift, loan, or payment, or to the particular candidate or candidates, political committee or political committees opposed by such gift, loan, or payment and additionally shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such loan or gift, promised or made.

(c) Any corporation that violates Subsection (a) of this Section shall be guilty of a felony and upon conviction be fined not less than One Thousand

Dollars (\$1,000) and not more than Ten Thousand Dollars (\$10,000).

(d) Every officer or director of any corporation who shall consent to any such unlawful gift, loan, or payment, or such unlawful promise to give, lend, or pay, by the corporation shall be guilty of a felony and upon conviction fined not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or be imprisoned not less than one (1) nor more than five (5) years, or be both so fined and imprisoned.

(e) Any candidate, political committee, campaign manager, or assistant campaign manager who knowingly receives such unlawful gift, loan, or payment from a corporation shall be guilty of a felony and upon conviction fined not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or be imprisoned not less than one (1) nor more than five (5) years, or be both so fined and imprisoned.

(f) If any officer, agent, or employee of any bona fide association, incorporated or unincorporated, organized for and actively engaged for one (1) year prior to such contribution in purely religious, charitable or eleemosynary activities, or local, district or statewide commercial or industrial clubs, or associations, or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof, shall use or permit the use of any stock, money, assets or other property contributed to such organization by any corporations or labor unions to further the cause of any political party, or to aid in the election or defeat of any candidate for office, or to pay any part of the expenses of any candidate for office, or part of the expenses of any political campaign, or political headquarters or to aid in the success or defeat of any political question to be voted on by the qualified voters of the State, or any subdivision thereof such officer, agent, or employee, shall be guilty of a felony and upon conviction fined not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or be imprisoned in the penitentiary not less than one (1) nor more than five (5) years, or be both so fined and imprisoned.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 243; Acts 1963, 58th Leg., p. 1017, ch. 424, § 108; Acts 1973, 63rd Leg., p. 1105, ch. 423, § 8, eff. June 11, 1973.]

<sup>1</sup> Transferred to art. 15.17 of this Code.

#### Art. 14.08. Records and Sworn Statement

(a) Each candidate and campaign manager of a political committee is hereby required to keep an accurate record of all gifts or loans of money or other things of value received, and of all gifts, loans,

and payments made, and of all debts incurred. Such record shall contain all information hereinafter required to be reported by such candidate or political committee.

(b) Each opposed candidate whose name and whose opponent's name are printed on the ballot at an election and each political committee active in an election concerning a candidate or measure shall file a sworn statement at each time required herein.

(c) The statements filed by a candidate shall list all contributions received and all expenditures made by the candidate, his campaign manager, and his assistant campaign managers. The statements filed by the campaign manager of a political committee shall list all contributions received and expenditures made by the committee. Each statement shall include the dates and amounts of all contributions and loans received, and the full name and complete address of each person from whom money or any other thing of value in an aggregate amount of more than \$10 has been received or borrowed and the date and amount of each contribution or loan. Each statement shall also include the dates and amounts of all expenditures, loans made, or debts incurred; the full names and complete addresses of all persons to whom any expenditures, or loans made of more than Ten Dollars (\$10) was made or debt of more than Ten Dollars (\$10) is owed; and the purpose of such expenditures, loans, and debts.

(d) Each political committee receiving contributions or making expenditures on behalf of a candidate shall notify the candidate as to the name and address of the political committee and its campaign manager. The candidate shall include within each statement required by this code a list identifying the name and address of each such political committee and campaign manager.

(e) Such statement shall be accompanied by the following affidavit verified by the candidate or campaign manager of the political committee:

"I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all contributions received and expenditures made required to be reported by me pursuant to the Texas Election Code."

(f) Any candidates or political committees involved in any election as defined in Section 237 of this code<sup>1</sup> shall file the statement and oath as follows: for a county office (any office of the federal, state, or county government which is filled by the choice of the voters residing in only one county or less than one county), or a measure submitted at an election called by a county, with the county clerk of the county; for a district office (any office of the federal or state government, less than statewide, which is filled by the choice of the voters residing in more than one county) or a state office, or statewide measure with the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality with the city secretary or city

clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision other than a county or municipality, with the secretary of the governing body of the political subdivision. The deadline for filing any statement required under this section is 5 p. m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p. m. of the next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.

(g) A candidate or political committee shall not accept a contribution of more than Five Hundred Dollars (\$500) from a political committee not in this state unless the contribution is accompanied by a written statement which sets forth the full name and complete address of each person who contributed more than One Hundred Dollars (\$100) of the contribution and which is certified as true and correct by an officer of the contributing political committee. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported.

(h) (1) Subject to the provisions of Paragraphs (2) and (3) of this Subsection, each candidate and political committee shall for all subsequent elections file with the appropriate authority, as designated herein:

(i) Not earlier than the 40th day and not later than the 31st day before the date of an election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures made by or on behalf of the candidate or political committee during the period beginning as provided in Paragraph (4) of this Subsection and ending on the 40th day before the date of the election;

(ii) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures made by or on behalf of the candidate or political committee during the period beginning on the day following the period included in the statement filed under Paragraph (1)(i) or Paragraph (2) of this Subsection and ending on the 10th day before the date of the election; and

(iii) Not later than the 31st day after the date of an election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures made by or on behalf of the candidate or political committee during the period beginning as provided in Paragraph (4) of this Subsection and ending on the 14th day after the election.

(2) Whenever the period for which a statement required by Paragraph (1)(i) of this Subsection begins later than the 40th day before the date of the election, the first statement shall be filed not later than the 14th day before the election and shall include the contributions and expenditures from the beginning of the period through the 21st day before the date of the election.

(3) Whenever a candidate is in a runoff election, not later than the 7th day before the election the candidate or political committee shall file a statement of all previously unreported contributions and expenditures through the 10th day before the runoff election. The statement required by Paragraph (1)(iii) of this Subsection shall be filed not later than the 31st day after the runoff election and shall list all contributions received and all expenditures made during the period beginning as provided in Paragraph (4) of this Subsection and ending on the 14th day after the runoff election.

(4) The period referred to in Paragraph (1)(i) of this Subsection begins:

(i) For a general or special election in which the candidate on whose behalf the statement is required was nominated at a primary election or convention, on the 15th day after the date of the preceding primary election or convention at which the candidate was nominated;

(ii) For any other election, on the day that a campaign manager was first appointed under Section 238 of this code,<sup>2</sup> or for a continuing political committee, on the day following the period included in the last report filed.

(5) If a statement filed under Paragraph (1)(iii) of this Subsection shows an unexpended balance of contributions or an expenditure deficit, the candidate or political committee shall file with the appropriate authority:

(i) Not later than the 31st day after the deadline for filing the statement under Paragraph (1)(iii) or Paragraph (3) of this Subsection, a supplemental statement of contributions and expenditures; and

(ii) Each year after the deadline for filing the first supplemental statement of contributions and expenditures, an additional statement shall be filed until the account shows no unexpended balance of contributions or expenditure deficit. The annual statement shall be filed on or before January 15th following the last filing hereafter required. Provided, however, that no filing will be required under this Subsection if there have been no expenditures or contributions since the last filing. Any candidate who subsequently

files for office before completing the requirements of this Subsection may carry the previous deficit or surplus forward into the reporting for the subsequent campaign in lieu of the continuing annual filing.

(i) If any candidate or political committee fails to file such sworn statement at the time provided herein or swears falsely therein, the candidate or the campaign manager of the political committee shall be subject upon conviction to a fine not less than One Hundred Dollars nor more than Five Thousand Dollars, or be imprisoned in the penitentiary not less than one nor more than five years, or be both so fined and imprisoned.

(j) Any candidate or campaign manager of a political committee who fails to report in whole or in part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in any election prior to which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.

(k) Any candidate or campaign manager of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.

(l) It shall be the duty of any person making one or more contributions or loans aggregating more than One Hundred Dollars (\$100) to any candidate or political committee for the purpose of any election to ascertain whether the candidate or political committee properly reports such contributions or loans, as provided in this Section. If such contribution or loan is not reported, it shall be the duty of the person making such contribution or loan to report the same under oath to the proper official as provided in this Section. If such contribution or loan is not reported by either the candidate, the political committee, or the person making same, the latter shall be civilly liable to each opponent of the favored candidate for double the amount of such unreported contribution or loan, or part thereof unreported, and for reasonable attorneys' fees for collecting the same.

(m) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 244; Acts 1955, 54th Leg., p. 503, ch. 145, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 107; Acts 1967, 60th Leg., pp. 1925, 1926, ch. 723, §§ 65 to 67, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 37, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1106, ch. 423, § 9, eff. June 11, 1973.]

<sup>1</sup> Article 14.01.

<sup>2</sup> Article 14.02.

#### Art. 14.09. Leave Name Off Ticket

Any candidate who shall knowingly permit or assent to the violation of any provision of this Chapter by any campaign manager or assistant campaign manager, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Provided, no candidate in the general election shall forfeit the right to have his name printed on the ballot for such election if the Constitution of this State prescribes the qualifications of the holder of the office sought by the candidate.

Proceedings by quo warranto to enforce the provisions of this Section [this article], or to determine the right of any candidate alleged to have violated any provision of this Chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this Chapter to have his name placed upon the official ballot for the general election, may be instituted at the suit of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 245.]

#### Art. 14.10. Political Advertising

(a) Anything published in a newspaper, magazine or journal, or any pamphlet, handbill or other printed matter, or anything broadcast over a radio or television station or displayed on a billboard, in favor of or in opposition to any candidate for any public office or office of a political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any political party, or in favor of or in opposition to any proposition submitted to a vote of the people, in consideration of the receipt or promise of money or other thing of value, shall for the purposes of this section be considered as political advertising. All advertisements of marked ballots, advising or suggesting how voters should mark their ballots, shall be included in the meaning of political advertising.

(b) No political advertising shall be accepted for printing, publication, or broadcasting unless a copy of the matter to be printed or published, signed by the individual contracting therefor and showing his full address and, if he is acting as an agent, showing also the name of the candidate, political committee, or business entity he represents, is deposited with printer, publisher, or broadcaster accepting the advertising. The person accepting the advertising shall preserve the signed copy for a period of one year after the date of the election to which the advertising relates, and shall permit any interested individual to inspect the signed copy at any time

during business hours, but only after the advertising has been printed, published, or broadcast. Such advertising shall be labeled as political advertising in the advertisement as printed, published or broadcast. Any printed or published political advertising shall also have printed on it the name and address of the printer or publisher and the person paying for the advertising.

Any individual, firm, or corporation who violates the provisions of this Section shall be guilty of a felony and upon conviction shall be fined not less than \$100 nor more than \$5,000 or be imprisoned not less than one year nor more than five years or be both so fined and imprisoned.

(c) Any advertising medium or any officer or agent thereof who willfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service at the regular advertising rates of such medium, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due at regular advertising rates, or any person who pays or offers to pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising matter, shall be fined not more than one hundred dollars.

(d) Either party to a violation of this section may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 246; Acts 1963, 58th Leg., p. 1017, ch. 424, § 109; Acts 1967, 60th Leg., p. 1926, ch. 723, § 68, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1109, ch. 423, § 10, eff. June 11, 1973.]

#### Art. 14.11. Repeal of Conflicting Laws

All laws and parts of laws in conflict herewith are repealed in so far as such laws are in actual conflict with the provisions of this code, and in case of such conflict the provisions of this code shall control and be effective. However, nothing in this Act shall be construed to nullify or repeal any Act of the Legislature passed at the Regular Session of the Fifty-second Legislature.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 247.]

#### Art. 14.12. Partial Unconstitutionality and Repeals

If any part of this code is held unconstitutional, it shall not void or affect the application of any part of this code which can operate independently of the unconstitutional provision.

Nothing in this Act shall in anywise alter, amend or repeal House Bill No. 43, Acts, Regular Session, Fifty-second Legislature.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 248.]

<sup>1</sup> Civil Statutes, arts. 3154(a), 3158a.

#### Art. 14.13. Election Commission

(a) There is hereby established a County Election Commission in each county of the state. The Coun-

ty Election Commission shall consist of the two persons serving as the county chairmen for the two political parties receiving the first and second highest number of votes cast for Governor in the immediately preceding General Election for Governor and the district judge senior in past consecutive service presiding in or over a district court in the county whether or not it be the county of his residence.

(b) The County Election Commission may at its own discretion or shall upon request inspect any campaign contribution and expenditure statement filed with the county clerk of that county or the clerk of any municipality or political subdivision located partially or wholly within that county provided the filing is done within that particular county. The Commission shall immediately notify any candidate or political committee campaign manager required to file a statement if:

(1) It appears that the person has failed to file a statement as required by law or the statement filed by that person does not conform to law; or

(2) A written complaint is filed by any registered voter alleging that a statement filed with the proper authority does not conform to law or that a person has failed to file a statement.

If after proper notification by the Commission a candidate or political committee fails to comply with the provisions of this code, the Commission shall inform the county or district attorney of the violation so that appropriate legal action may be taken.

(c) There is hereby established a State Election Commission to consist of the two persons serving as state chairmen of the executive committees of the two political parties receiving the first and second highest number of votes cast for Governor in the immediately preceding General Election for Governor; the Chief Justice of the Supreme Court; the Presiding Judge of the Court of Criminal Appeals; one Justice of a Court of Civil Appeals appointed by the Chief Justice of the Supreme Court; one district judge appointed by the Presiding Judge of the Court of Criminal Appeals; two county party chairmen of the executive committees of the two political parties described above; and the Secretary of State.

(d) The State Election Commission may at its own discretion or shall upon request inspect any campaign contribution and expenditure statement filed with the Secretary of State. The Commission shall immediately notify any candidate or political committee campaign manager required to file a statement if:

(1) It appears that the person has failed to file a statement as required by law or that a statement filed by that person does not conform to law; or

(2) A written complaint is filed by any registered voter alleging that a statement filed with the proper authority doesn't conform to law or that a person has failed to file a statement required by law.

If after proper notification by the Commission, a candidate or political committee fails to comply with the provisions of this code, the Commission shall inform the appropriate district attorney of the violation so that appropriate legal action may be taken. [Acts 1973, 63rd Leg., p. 1110, ch. 423, § 11, eff. June 11, 1973.]

**Art. 14.14. Injunctions**

The district courts of this state shall have jurisdiction to issue injunctions to enforce the provisions of this code upon application by any citizen of this state. [Acts 1973, 63rd Leg., p. 1111, ch. 423, § 12, eff. June 11, 1973.]

**CHAPTER FIFTEEN. OFFENSES RELATING TO ELECTIONS**

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- 15.01. Collector Failing or Refusing to Perform Duties as to Receipts.
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- 15.61. Altering or Destroying Ballots, Etc.
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- 15.71. Hiring Vehicle to Convey Voters; Removing Ballots from Polling Place.
- 15.72. Defacing Election Booth, Etc.

**SUBCHAPTER A. POLL TAX**

**Art. 15.01. Collector Failing or Refusing to Perform Duties as to Receipts**

Any Tax Collector charged with the duties as hereinabove provided<sup>1</sup> who shall fail or refuse to perform such duties, or who shall unlawfully deliver a poll tax receipt or certificate of exemption to anyone, shall be punished as now provided in Articles 198, 199, and 200 of the Penal Code of the State of Texas.

[Acts 1939, 46th Leg., p. 296, § 4.]

<sup>1</sup> Repealed arts. 5.14, 5.18, 5.22.

**Art. 15.02. Election Officer Aiding Alien Poll Taxpayer to Vote**

If any official of any election in this State shall knowingly permit or procure, or in any manner aid or abet, any alien poll taxpayer to vote at such election, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by confinement in the County Jail not less than thirty (30) nor more than ninety (90) days, or by both fine and imprisonment.

[Acts 1939, 46th Leg., p. 296, § 6.]

**Art. 15.03. Mailing Poll Tax Receipts, Penalty**

Anyone violating this Act,<sup>1</sup> upon conviction, shall be fined not less than \$25.00 nor more than \$200.00.

[Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, § 4.]

<sup>1</sup> Acts 1929, 41st Leg., 1st C.S., ch. 51, p. 111, §§ 1 to 3, amending Civil Statutes, arts. 2963, 2965, 2968 (repealed arts. 5.12, 5.14, 5.16).

**SUBCHAPTER B. OFFENSES BEFORE ELECTION**

**Art. 15.11. Clerk to Post Names of Candidates**

The county clerk of each county shall post in a conspicuous place in his office for the inspection and information of the public the names of all candidates that have been lawfully certified to him to be printed on the official ballot for at least ten days before he orders the same to be printed on said ballot, and he shall order all the names of the candidates so certified printed on the ballot as provided by law and in case the county clerk refuses or wilfully neglects to comply with this requirement he shall be

fined not less than two hundred nor more than five hundred dollars.  
[1925 P.C.]

**Art. 15.12. Failure to Place Name of Candidate on Ballot**

Any county clerk or other officer charged by law with the duty of preparing or having printed the official ballot at any general or special election, and any county chairman or member of the county executive committee of any political party so charged with the duty of preparing or having printed the official ballot to be used at any primary election of such party, who fails or refuses, except in cases permitted by law, to have the name of any candidate or candidates whose nominations have been certified to him placed or printed on such official ballot, shall be confined in the penitentiary not less than one nor more than five years.  
[1925 P.C.]

**Art. 15.13. Protecting Ballots, Supplies and Returns**

If any person intrusted with the transmission to the precinct election judges of official ballots, poll tax receipts and exemption certificate rolls, sample cards, distance markers and any supplies required to conduct an election wilfully fails to deliver the same within the time required by law, or wilfully does any act to defeat the delivery thereof, or not being a person intrusted therewith, shall do any act to defeat the due delivery thereof, he shall be fined not less than two hundred nor more than five hundred dollars.  
[1925 P.C.]

**Art. 15.14. Refusing Employé Privilege of Voting**

Whoever refuses to an employé entitled to vote the privilege of attending the polls, or subjects such employé to a penalty or deduction of wages because of the exercise of such privilege, shall be fined not to exceed five hundred dollars.  
[1925 P.C.]

**Art. 15.15. Certificate of Naturalization**

Whoever wilfully procures from any court, clerk or other officer a certificate of naturalization, which has been allowed, signed or sealed in violation of the laws of the United States or of this State, with intent to enable him or any other person to vote at any election, when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, shall be confined in the penitentiary not less than five nor more than ten years.  
[1925 P.C.]

**Art. 15.16. Pay for Editorial Matter**

If any editor or manager of a newspaper, magazine or journal, or any person having control thereof, demands or receives any money, thing of value, reward or promise of future benefit for publishing anything as editorial matter in advocacy of or oppo-

sition to any candidate, or for or against any proposition submitted to a vote of the people, he, and also the one offering such reward, shall be fined not less than five hundred dollars nor more than one thousand dollars, or be imprisoned in jail not less than ten days nor more than thirty days. If the offense be committed by the president of any corporation, or by any officer thereof with the knowledge or consent of its president, in addition to punishment of the individual, its charter shall be forfeited. Either party to a violation of this article may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify.  
[1925 P.C.; Acts 1963, 54th Leg., p. 1017, ch. 424, § 111.]

**Art. 15.16a. Political Advertising; Regulations**

Sec. 1. No newspaper, magazine, or other publication, published daily, biweekly, weekly, monthly, or at other intervals shall sell, solicit, bargain for, offer, or accept for money, other consideration, or favors, any kind or manner of political advertising from more than one candidate for any or all local, county, State, or Federal offices, unless such publication shall have been published and distributed generally for at least twelve (12) months next preceding the acceptance of the advertising.

Sec. 2. Provided however that this Act shall not apply to publications which have been published and circulated generally for at least twelve (12) months next preceding the acceptance of such advertising, for other than purely political purposes in some locality other than that in which it is located and published at the time of accepting such political advertising from more than one candidate.

Sec. 3. And provided further that Section 1 of this Act shall not apply to publications which have, prior to the acceptance of political advertising from more than one candidate, been published and circulated generally for a period of less than one year immediately preceding the acceptance of such advertising in the event that such publication can show ownership of its physical plant and that its advertising rates are in proportion to the amount and kind of its circulation.

Sec. 4. Whoever violates the provisions of this Act shall be fined not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or be imprisoned in jail not less than three (3) months nor more than six (6) months, or both. Each violation of this Act shall be a separate offense.  
[Acts 1939, 46th Leg., p. 251.]

**Art. 15.17. Corporation Contributing**

(a) No corporation, domestic or foreign, and no officer, director, stockholder, employee or agent, acting in behalf of any corporation, shall directly or indirectly give, pay, expend or contribute or promise to give, pay, expend or contribute any money or thing of value in order to aid or hinder the nomina-

tion or election of any person to public office in this State or any district, municipality, or political subdivision thereof, or in order to influence or affect the vote on any question to be voted upon by the qualified voters of this State or any district, municipality, or political subdivision thereof, provided, however, that:

(b) In any election in this State or any district, municipality, or political subdivision thereof, wherein the question to be voted upon directly affects the granting, refusing, existence or value of any franchise granted to a corporation which has the right of eminent domain, such corporation may present facts and arguments to the voters bearing upon such question by any lawful means of publicity and pay the expense thereof; provided, however, that all such means of publicity employed shall contain a clear statement that the same are sponsored and paid for by such corporation; and the use of any such means of publicity by such corporation which do not contain such statement shall subject such corporation to the penalties hereinafter provided. Provided that nothing in this subsection shall be construed as permitting any such corporation to directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend, or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to any public office in this State.

(c) If any corporation authorized by Section (b) hereof, or if any person, partnership or association makes any expenditure or incurs any obligation directly or indirectly for the purpose of influencing an election of the character described in Section (b) hereof, it shall be the duty of such corporation, person, partnership or association to file with the governing body of the political subdivision in which such election is held and also with the Secretary of State by mail, not more than ten (10) days nor less than five (5) days before the date of such election and also within ten (10) days after the date of such election, itemized, verified accounts correctly showing as of the date of filing, the amounts of money and description and value of all things given, paid, expended and contributed and the names of the recipients thereof and all amounts of money and description and value of all things promised or obligated to be given, paid, expended, and contributed, and the names of the promisees thereof, by such corporation, person, firm or association, in connection with such election; all such accounts to be verified under oath by an officer of such corporation, or by such person or member of the partnership or association as the case may be; provided, however, that no such corporation, person, partnership or association may give, pay, expend, contribute or promise to give, pay, expend, or contribute money and things of value of the total amount exceeding Seven Hundred and Fifty Dollars (\$750), or exceeding Twenty-five Dollars (\$25) for each one hundred population of the district, municipality or political subdivision according to the last preceding Federal

Census in which such election is held, whichever amount is greater; provided further that such amounts expended may not, in fixing rates to be charged by such corporation, be charged as operating cost or capital. Any corporation, person, partnership or association failing to file the accounts as provided herein or filing an account which is false in any material respect, or violating the limitation or expenditures provided herein, shall be subject to the penalties hereinafter provided, but in no event shall any such corporation be authorized to spend more than Ten Thousand Dollars (\$10,000) in any one election.

(d) Any person who violates any provision of this article, or who, as an officer, director or employee of a corporation, or as a member of a partnership or association, authorizes or does any act in violation hereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or be imprisoned not less than one nor more than five years, or be both so fined and imprisoned.

[1925 P.C.; Acts 1941, 47th Leg., p. 789, ch. 491, § 4; Acts 1963, 58th Leg., p. 1017, ch. 424, § 112.]

#### SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

##### Art. 15.21. List of Qualified Voters

Any person who being an officer, clerk or employé of the county collector of taxes, precinct judge, or clerk of election who knowingly puts in the certified list of qualified voters of a precinct any other number than that written when the poll tax receipt or certificate of exemption was issued; or who knowingly delivers to or receives from any voter any poll tax receipt or certificate of exemption on which is placed any other name than that first written when it was issued, shall be fined not to exceed five hundred dollars.

[1925 P.C.]

##### Art. 15.22. Permitted Illegal Voting

Any judge of an election or primary who wilfully permits a person to vote, whose name does not appear on the list of qualified voters of the precinct and who fails to present his poll tax receipt or certificate of exemption or make affidavit of its loss or misplacement or inadvertently left at home, except in cases where no certificate of exemption or tax receipt is required, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

##### Art. 15.23. Refusing to Permit Voter to Vote

Any judge of any election who refuses to receive the vote of any voter who, when his vote is objected to, shows by his own oath and the oath of a well-known resident of the precinct that he is entitled to vote at such election and in such precinct, or who refuses to deliver an official ballot to one entitled to vote under the law, or who refuses to permit a voter to deposit his ballot after one entitled to vote has legally folded and returned same, shall be fined not to exceed five hundred dollars.

[1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 113.]

**Art. 15.24. Influencing Voter**

Any judge, clerk or other person who may be in the room where an election, either primary, special or general, is being held, who there indicates by word or sign how he desires a citizen to vote or not to vote, shall be fined not less than two hundred nor more than five hundred dollars and be confined in jail not less than ten nor more than thirty days. [1925 P.C.]

**Art. 15.25. Illegal Acts of Judge of Election**

Any judge of election who wilfully permits the removal of ballots before the closing of the polls or wilfully fails to keep order within the polling place, or permits any person, except the clerks and judges of election or those who enter for the purpose of voting, to come within the guard rail, or knowingly permits anyone to remove, alter or deface a stamp number or signature legally placed on a ballot for future identification shall be fined not to exceed one hundred dollars. [1925 P.C.]

**Art. 15.26. Intimidation by Election Officer**

Any manager, judge or clerk of an election who shall, while in discharge of his duties as such, by violence or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be fined not exceeding one thousand dollars. [1925 P.C.]

**Art. 15.27. Election Officer Opening Ballot**

Any manager or other officer of election who shall unfold or examine any ballot, or who shall examine the indorsement on any ballot by comparing it with the list of voters when the votes are counted or being counted, or who shall examine or permit to be examined by any other person the ballots subsequent to their being received into the ballot box, except in the manner prescribed by law, shall be confined in the penitentiary not less than one nor more than two years. [1925 P.C.]

**Art. 15.28. Election Officer Divulging Vote**

Any presiding officer, judge, clerk, or other officer of any general or primary election who shall from an inspection of the tickets and not in a judicial investigation divulge how any person has voted at such election shall be fined not less than one hundred nor more than five hundred dollars. [1925 P.C.]

**Art. 15.29. Interfering with Ballot**

If any manager, judge or clerk of any election shall put into or permit to be put in the ballot box any ballot not given by a voter, or take out or permit to be taken out of such box any ballot deposited therein except in the manner prescribed by law, or change any ballot given by an elector, he

shall be fined not less than one hundred nor more than one thousand dollars. [1925 P.C.]

**Art. 15.30. Aid to Voter**

Any judge or clerk at an election who assists any voter to prepare his ballot except when a voter is unable to prepare the same himself because of some bodily infirmity such as renders him unable to write or to see, or who is assisting a voter in the preparation of his ballot prepares the same otherwise than as the voter directs, or who suggests by word or sign or gesture how such voter shall vote, shall be fined not less than two hundred dollars nor more than five hundred dollars or be confined in jail for not less than two nor more than twelve months, or both. [1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 114, eff. Aug. 23, 1963.]

**Art. 15.31. Presiding Officer Failing to Deliver Ballot**

Any presiding officer of any election precinct who shall fail, immediately after such election, to securely box, in the mode prescribed by law, all the ballots cast thereat, and within the time provided by law, thereafter to deliver the same to the county clerk of his county, shall be fined not less than fifty nor more than five hundred dollars, and in addition thereto, may be imprisoned in jail not exceeding six months. [1925 P.C.]

**Art. 15.32. Making False Canvass; Court May Open Ballot Boxes**

Any Judge or Clerk of an election, chairman or member of a party executive committee, or officer of a primary, special or general election, who willfully makes any false canvass of the votes cast at such election, or a false statement of the result of a canvass of the ballots cast shall be confined in the penitentiary not less than two (2) nor more than five (5) years. In all such cases, the Court shall have authority to unseal and open the ballot boxes, and the Court may count, or cause to be counted under its direction, the ballots cast in any election; however, in so doing the Court shall exercise due diligence to preserve the secrecy of the ballots, and upon completion of such count the said ballot boxes with their original contents shall be resealed and redelivered to the County Clerk who shall keep the same until ordered by the Court to destroy the same. [1925 P.C.; Acts 1943, 48th Leg., p. 438, ch. 296, § 1.]

**Art. 15.33. False Certificate by Chairman**

Any chairman of a county executive or district or State executive committee who is charged with the duty of certifying the names of the candidates selected by a primary convention or primary election who wilfully omits to certify the name of any candidate legally chosen, or who certifies falsely regarding anyone chosen or defeated, shall be fined not exceeding five hundred dollars. [1925 P.C.]

**Art. 15.34. Giving False Certificate of Election**

If any officer authorized by law to give a certificate of election shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine not exceeding three hundred dollars, and in addition thereto may be imprisoned in jail not less than one month nor more than one year.  
[1925 P.C.]

**Art. 15.35. Wilfully Failing or Refusing to Discharge Duty**

Any judge, clerk, chairman or member of an executive committee, collector of taxes, county clerk, sheriff, county judge or judge of an election, president or member of a State Convention, or Secretary of State who wilfully fails or refuses to discharge any duty imposed on him under the law, shall be fined not to exceed five hundred dollars, unless the particular act under some other law is made a felony.  
[1925 P.C.]

**Art. 15.36. "Election" Defined**

The term "election" as used in this chapter, means any election, either general, special, or primary, held under authority of law within this State, or within any town, city, district, county, precinct, or any other subdivision within this State for any purpose whatever.  
[1925 P.C.]

**Art. 15.36a. Election Officers**

Any officer, election officer or judge, clerk or supervisor of any primary election who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty (\$50.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or shall be confined in the county jail for any period not to exceed one year, or shall be punished by both such fine and imprisonment.  
[Acts 1933, 43rd Leg., p. 762, ch. 225, § 13.]

**Art. 15.36b. Failure of Election Judge to Make Returns**

Any County Judge, County Chairman or any presiding judge of a precinct election who fails to make the complete official returns as required by this Act, shall be punished by a fine of not less than Fifty (\$50.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment; provided, however, that the failure of any person named herein to make the election returns within the time prescribed by this Act shall not affect the validity of such returns when made.  
[Acts 1933, 43rd Leg., p. 769, ch. 228, § 3.]

## SUBCHAPTER D. ILLEGAL VOTING

**Art. 15.41. Illegal Voting**

If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any

proposition to be determined by said election, he shall be confined in the penitentiary not less than two nor more than five years.  
[1925 P.C.]

**Art. 15.42. Instigating Illegal Voting**

Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be fined not less than one hundred nor more than five hundred dollars, and may in addition thereto be imprisoned in jail not exceeding one month.  
[1925 P.C.]

**Art. 15.43. False Swearing by Voter**

Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be confined in the penitentiary not less than two nor more than five years.  
[1925 P.C.]

**Art. 15.44. Procuring Voter to Swear Falsely**

Whoever wilfully and corruptly procures any person to swear falsely, as prescribed in the preceding article, shall be confined in the penitentiary not to exceed three years, or be fined not exceeding three thousand dollars.  
[1925 P.C.]

**Art. 15.45. Illegal Voting at Primary**

Any person voting at any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office who is not qualified to vote in the election precinct where he offers to vote at the next State, county or municipal election, or who shall vote more than once at the same or different precincts or polls on the same day, or different days in the same primary election, shall be fined not exceeding five hundred dollars, or be imprisoned in jail not exceeding sixty days, or both.  
[1925 P.C.]

**Art. 15.46. Procuring an Illegal Vote**

Whoever shall knowingly procure any illegal vote to be cast at such primary election shall be punished as provided in the preceding article.  
[1925 P.C.]

**Art. 15.47. Absentee Voting**

Any person wishing to vote as an absentee voter who shall vote or offer to vote illegally, or in any case or at any place where he is not entitled to vote, or who shall make false representation in any effort to vote, or who shall attempt to vote on any poll tax

receipt issued to a person other than himself, shall be fined not more than one thousand dollars or be imprisoned in the county jail not more than two years or both so fined and imprisoned. This law applies to any and all elections including general, special and primary elections.  
[1925 P.C.]

#### Art. 15.48. Falsely Personating Another

Whoever attempts to falsely personate at an election another person, and vote or attempt to vote on the authority of a poll tax receipt or certificate of exemption not issued to him by the county tax collector, shall be confined in the penitentiary not less than three nor more than five years.  
[1925 P.C.]

#### Art. 15.49. Participating in Primary Elections or Conventions of More Than One Party

Whoever votes or offers to vote at either a general primary election or a runoff primary election or participates or offers to participate in a convention of a political party, having voted at either a general primary election or a runoff primary election or participated in a convention of any other party during the same voting year, shall be fined not less than one hundred dollars nor more than five hundred dollars. As used in this article, the term "voting year" means the period for which each annual voter registration is effective.  
[1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 115, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 1926, ch. 723, § 69, eff. Aug. 28, 1967.]

#### Art. 15.50. Voting More Than Once

Whoever at a general, special or primary election votes or attempts to vote more than once shall be fined not less than one hundred nor more than five hundred dollars.  
[1925 P.C.]

#### Art. 15.51. Using Dummy Ballot

Any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked paper or ballot, if he has one. Any person who gives, receives or secures or is interested in giving or receiving an official ballot or any paper whatever, on which is marked, printed or written the name of any person for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide by which he could make out his ticket, shall be fined not less than one hundred nor

more than five hundred dollars, and be confined in jail thirty days.  
[1925 P.C.]

#### Art. 15.52. Illegal Acts While Voting

Any voter who shall show his ballot so as to reveal the vote cast by him, or who marks it otherwise than required by law for identification or who after voting delivers to the precinct judge of election any ballot other than the one delivered to him by the judge at the polling place, shall be fined not exceeding five hundred dollars.  
[1925 P.C.]

#### SUBCHAPTER E. OFFENSES AFTER ELECTION

#### Art. 15.61. Altering or Destroying Ballots, Etc.

If any person shall willfully alter, obliterate, or suppress any ballots, election returns or certificates of election, or shall willfully destroy any ballots or election returns except as permitted by law, he shall be confined in the penitentiary not less than three nor more than five years.  
[1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 116, eff. Aug. 23, 1963.]

#### Art. 15.62. Messenger Tampering with Ballot

Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same to the person directed shall be fined not exceeding five hundred dollars.  
[1925 P.C.]

#### Art. 15.63. Failing to Deliver Returns

If any person intrusted with the transmission of an election return, shall wilfully do any act that shall defeat the delivery thereof or shall wilfully neglect to deliver the same as directed by law, he shall be fined not exceeding one thousand dollars.  
[1925 P.C.]

#### Art. 15.63a. Immediate Delivery of Returns

Any chairman of a political party or other person or officer violating or failing to comply with any provision of this Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$500.00, or be confined in the County jail not to exceed thirty days, or by both such fine and imprisonment.  
[Acts 1929, 41st Leg., p. 570, ch. 275, § 2.]

<sup>1</sup> Section 1 of the 1929 Act was an amendment to Civil Statutes, art. 3124 (now art. 13.24).

#### Art. 15.64. Preventing Delivery of Returns

Whoever shall take away any election return from any person intrusted therewith, either by force or in any other manner, or wilfully do any act that shall defeat the due delivery thereof, as directed by law, shall be fined not exceeding two thousand dollars.  
[1925 P.C.]

**Art. 15.65. Failure to Keep Ballot Box**

Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be fined not to exceed five hundred dollars.

[1925 P.C.]

**Art. 15.66. County Clerk to Keep Ballot Box**

If any county clerk shall fail, neglect or refuse to keep securely any ballot box containing tickets of election committed to his custody by the presiding officer of any election precinct, he shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in jail not exceeding six months.

[1925 P.C.]

**Art. 15.67. Destruction of Ballots**

If any county clerk or other officer charged with the custody of the ballots cast at an election fails, after the expiration of sixty days from the date of such election, to destroy by burning or shredding all the ballots cast at such election which may have come into his custody, except where a contest or criminal investigation in connection with the election is pending or where ordered by the district court to defer destruction of the ballots, he shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in jail not exceeding six months.

[1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 117; Acts 1969, 61st Leg., p. 2662, ch. 878, § 38, eff. Sept. 1, 1969.]

**SUBCHAPTER F. MISCONDUCT AT ELECTIONS**

**Art. 15.71. Hiring Vehicle to Convey Voters; Removing Ballots from Polling Place**

Whoever hires any vehicle or hires any person to operate a vehicle for the purpose of conveying voters to the polling place, or rewards any person in money or other thing of value for procuring a vehicle or a driver for such purpose, shall be fined not exceeding five hundred dollars. This article shall not be construed to prohibit a voter from paying for the services of a vehicle or a driver for the purpose of conveying him to the polling place or to prevent him from allowing other voters to ride in the vehicle with him while he is going to the polling place in order to vote or returning therefrom after having voted.

Whoever willfully removes any ballots from the polling place, except as permitted by law, shall be fined not exceeding five hundred dollars.

[1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 118, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 1926, ch. 723, § 70, eff. Aug. 28, 1967.]

**Art. 15.72. Defacing Election Booth, Etc.**

Any person who, during an election, wilfully defaces or injures an election booth or compartment, or wilfully removes any of the supplies provided for elections, or before the closing of the polls wilfully defaces or destroys any list of candidates to be voted for at an election which has been posted in accordance with law, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

## DISPOSITION TABLE

Acts 1951, 52nd Leg., ch. 492, enacting the Texas Election Code of 1951, provided in section 2 for the repeal of all laws relating to elections, suffrage and parties, as found in Title 50 of the Revised Civil Statutes of 1925.

This Table shows where the subject matter of the Articles in former Title 50 of the Revised Civil Statutes of 1925 is incorporated in the Texas Election Code.

Former Articles	1951 Election Code Article	Vernon's Election Code Article	Former Articles	1951 Election Code Article	Vernon's Election Code Article
2923	1	1.01	2956	37	5.05
2924	2	1.02	2956a	38	5.06
2925	3	1.03	2957	39	5.07
2926	4	1.04	2958	40	5.08
2927	5	1.05	2959	41	5.09
2928	6	1.06	2960	42	5.10
2929	7	1.07	2960a	—	—
2929a	—	—	2961	43	5.11
2929a—1	8	1.08	2962	43	5.11
2930	9	2.01	2963	44	5.12
2931	10	2.02	2964	45	5.13
2932	11	2.03	2965	46	5.14
2933	12	2.04	2966	47	5.15
2934	13	2.05	2967	47	5.15
2935	—	—	2968	48	5.16
2936	14	2.06	2968a	49	5.17
2937	15	3.01	2969	—	—
2938	16	3.02	2970	50	5.18
2939	17	3.03	2971	51	5.19
2940	18	3.04	2972	52	5.20
2941	19	3.05	2973	53	5.21
2942	20	3.06	2974	53	5.21
2942a	21	3.07	2975	54	5.22
2943	22	3.08	2976	55	5.23
2944	23	3.09	2977	56	5.24
2945	—	—	2977a	—	—
2946	24	4.01	2978	57	6.01
2947	25	4.02	2978a	58	6.02
2948	26	4.03	2978b	59	6.03
2949	27	4.04	2979	60	6.04
2950	28	4.05	2980	61	6.05
2951	29	4.06	2981	62	6.06
2951a	30	4.07	2982	63	6.07
2952	—	—	2983	63a	6.08
2953	31	4.08	2984	64	6.09
2953a	32	4.09	2985	65	6.10
2954	33	5.01	2986	66	7.01
2955	34	5.02	2987	67	7.02
2955a	35	5.03	2988	68	7.03
2955b	36	5.04	2989	69	7.04

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Former Articles	1951 Election Code Article	Vernon's Election Code Article
2990	70	7.05
2991	71	7.06
2992	72	7.07
2992a	73	7.08
2993	74	7.09
2994	75	7.10
2995	76	7.11
2996	77	7.12
2997	78	7.13
2997a	79	7.14
2997b	80	7.15
2997c	81	7.16
2997d	82	7.17
2998	83	8.01
2999	84	8.02
3000	85	8.03
3001	86	8.04
3002	87	8.05
3003	88	8.06
3004	89	8.07
3005	90	8.08
3006	91	8.09
3007	92	8.10
3008	93	8.11
3009	94	8.12
3010	95	8.13
3011	96	8.14
3012	97	8.15
3013	98	8.16
3014	99	8.17
3015	100	8.18
3016	101	8.19
3017	102	8.20
3018	103	8.21
3019	104	8.22
3020	105	8.23
3021	106	8.24
3022	107	8.25
3022a	108	8.26
3023	109	8.27
3024	110	8.28
3025	111	8.29
3026	112	8.30
3026a	113	8.31
3027	114	8.32
3028	115	8.33
3029	116	8.34
3030	117	8.35
3031	118	8.36
3032	119	8.37
3033	120	8.38
3034	121	8.39
3035	122	8.40
3036	123	8.41
3037	124	8.42
3038	125	8.43
3039	126	8.44
3039a		

Former Articles	1951 Election Code Article	Vernon's Election Code Article
3040	127	8.45
3040a	128	8.46
3041	129	9.01
---	130	9.02
3042	131	9.03
3043	132	9.04
3044	133	9.05
3045	134	9.06
3046	135	9.07
3047	136	9.08
3048	137	9.09
3049	138	9.10
3050	139	9.11
3051	140	9.12
3052	141	9.13
3053	142	9.14
3054	143	9.15
3055	144	9.16
3056	145	9.17
3057	146	9.18
3058	147	9.19
3059	148	9.20
3060	149	9.21
3061	150	9.22
3062	151	9.23
3063	152	9.24
3064	153	9.25
3065	154	9.26
3066	155	9.27
3067	156	9.28
3068	157	9.29
3069	158	9.30
3070	159	9.31
3071	160	9.32
3072	161	9.33
3073	162	9.34
3074	163	9.35
3075	164	9.36
---	165	9.37
---	166	9.38
3076	167	10.01
3077	168	10.02
3078	168	10.02
3078a	169	10.03
3079	170	11.01
3079A	171	11.02
3079B	172	11.03
3079C	173	11.04
3080	24	4.01
3081	24	4.01
3081	114	8.32
3082	119	8.37
3083	120	8.38
3084	174	11.05
3085	175	11.06
3086	176	12.01
3087	177	12.02
3088	176	12.01

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3090	176	12.01	3138	215	13.37
3091	176	12.01	3139	216	13.38
3092	176	12.01	3140	217	13.39
3093	176	12.01	3141	217a	13.40
3094	176	12.01	3142	218	13.41
3095	176	12.01	3143	219	13.42
3096	176	12.01	3144	—	—
3097	32a	4.10	3145	—	—
3098	176	12.01	3146	220	13.43
3099	178	12.03	3147	208	13.30
3100	179	13.01	3148	208	13.30
3101	180	13.02	3149	—	—
3102	181	13.03	3150	208	13.30
3103	182	13.04	3151	—	—
3104	183	13.05	3152	208	13.30
3105	184	13.06	3153	208	13.30
3106	185	13.07	3153a	221	13.44
3107	—	—	3154	222	13.45
3108	186	13.08	3154(a)	212	13.34
—	186a	13.08a	3155	223	13.46
3109	187	13.09	3156	224	13.47
3109a	188	13.10	3157	225	13.48
3110	189	13.11	3158	226	13.49
3111	190	13.12	3158a	212	13.34
3112	190	13.12	3159	227	13.50
3113	190	13.12	3160	228	13.51
3114	191	13.13	3161	229	13.52
3115	192	13.14	3162	230	13.53
3116	193	13.15	3163	231	13.54
3116a	194	13.16	3164	232	13.55
3116b	194	13.16	3165	233	13.56
3116c	194	13.16	3166	234	13.57
3116d	194	13.16	3167	235	13.58
3116e	194	13.16	3167a	236	13.59
3116f	194	13.16	3168	237	14.01
3116g	194	13.16	3169	238	14.02
3117	195	13.17	3170	239	14.03
3118	196	13.18	3170a	—	—
3119	197	13.19	3170b	—	—
3120	198	13.20	3171	240	14.04
3121	199	13.21	—	241	14.05
3122	200	13.22	—	242	14.06
3123	201	13.23	—	243	14.07
3124	202	13.24	3172	244	14.08
3125	203	13.25	3173	245	14.09
3126	204	13.26	—	246	14.10
3127	205	13.27	—	247	14.11
3128	206	13.28	—	conflicting acts.	
3129	207	13.29	—	248	14.12
3130	208	13.30	—	(saving clause).	
3131	209	13.31	—	Sec. 2 of ch. 492—re-	
3132	210	13.32	—	pealing clause and ef-	
3133	211	13.33	—	fective date.	
3134	212	13.34	—	Sec. 3 of ch. 492—	
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# INSURANCE CODE

Acts 1951, 52nd Leg., ch. 491

Effective September 7, 1951

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## CHAPTER ONE. THE BOARD, ITS POWERS AND DUTIES

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### Art. 1.01. Short Title

This Act constitutes and shall be known as the Insurance Code.

[Acts 1951, 52nd Leg., ch. 491.]

### Art. 1.02. State Board of Insurance

(a) There is hereby created the State Board of Insurance which shall consist of three members, all of whom shall be citizens of Texas. They shall be appointed by the Governor, by and with the advice and consent of the Senate of Texas. The term of office of each member shall be as provided in this Code. Each member of the Board shall be a person with at least ten (10) years of successful experience in business, professional or governmental activities, or a total of at least ten (10) years in any combination of two or more of such activities. Each member shall be available at all reasonable times for the discharge of the duties and functions delegated to the members of said Board by this amendatory Act, but the members shall act as a unit, and in no event shall the individual members divide or confine their activities to special fields of insurance regulation or attempt to administer the functions hereinafter assigned to the Commissioner of Insurance.

(b) All of the powers, functions, authorities, prerogatives, duties, obligations and responsibilities, heretofore vested in and devolving upon the Board of Insurance Commissioners as heretofore constituted under prior statutes; the Chairman of said Board; the Life Insurance Commissioner; the Fire Insurance Commissioner; and the Casualty Insurance Commissioner, shall hereafter be vested in the State Board of Insurance as a body, and except as provided herein, they shall be exercised, performed, carried out, and administered by the Commissioner of Insurance as the chief executive and administrative officer of the Board in accordance with the pertinent laws of this state and the rules and regula-

tions for uniform application made by the Board and subject to supervision of the Board. The duties of the State Board of Insurance shall be primarily in a supervisory capacity and the carrying out and administering the details of the Insurance Code shall be primarily the duty and responsibility of the Commissioner of Insurance acting under the supervision of the Board.

(c) Except as otherwise provided herein, all remaining references in the Insurance Code and other statutes of this state to "Board of Insurance Commissioners," "Board," or individual Commissioners shall mean the "State Board of Insurance" or the "Commissioner of Insurance," consistent with their respective duties and responsibilities under the terms and provisions of this amendatory Act.

(d) Upon the appointment of the members of the State Board of Insurance and on February 10th of each odd-numbered year thereafter, the Governor shall appoint from among the membership a Chairman who shall be known and designated as the Chairman of the State Board of Insurance.

(e) Irrespective of any provisions of the Insurance Code to the contrary, all references to a State official as being "Chairman of the Board of Insurance Commissioners," "Chairman of the State Board of Insurance," "Chairman of the Board," "Chairman of such Board," "Chairman of said Board," and the word "Chairman" in those provisions of the Insurance Code and other statutes of this State having to do with service of process upon an insurer shall be construed to be references to the Commissioner of Insurance and the requirements of such statutes relating to service of process upon insurers shall be satisfied where the service upon and acts to be done by the State official designated by such a statute is had upon and the acts performed by the Commissioner of Insurance.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 1035, ch. 391, § 1; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1971, 62nd Leg., p. 2829, ch. 924, § 1, eff. June 15, 1971.]

#### Art. 1.03. Terms of Office

(a) Upon the effective date of this Act amending the Insurance Code, the Governor shall appoint, by and with the advice and consent of the Senate of Texas, three members to the State Board of Insurance. One appointment shall be for a term expiring January 31, 1959; another, for a term expiring January 31, 1961; and a third, for a term expiring January 31, 1963. Thereafter, in each odd-numbered year, the Governor shall appoint, by and with the advice and consent of the Senate of Texas, a member for a term of six years which term shall begin on the first day of February of each such year. Each member shall serve until his successor has qualified; provided that the Governor may remove from office any member of the Board who fails for any reason to attend a meeting of the Board for three consecutive months, and he shall remove from office any member of the Board who for any reason fails to

attend a meeting of the Board for six months. Such removal shall be by an instrument in writing filed with the Secretary of State and the State Board of Insurance, and the office of the member so removed shall be deemed vacant the same as if the member had died or resigned. The members of the Board of Insurance Commissioners in office immediately prior to the effective date of this Act amending the Code shall serve as interim members of the State Board of Insurance until the members of such Board provided for in this Act shall have been appointed and qualified.

(b) Vacancies occurring in any such office on the Board during any term shall, with the advice and consent of the Senate, be filled by appointment by the Governor, which appointment shall extend only to the end of the unexpired term.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 1035, ch. 391, § 2; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

#### Art. 1.04. Duties and Organization of the State Board of Insurance

(a) The State Board of Insurance shall operate and function as one body or a unit and a majority vote of the members of the Board shall be necessary to transact any of its official business. The Board shall maintain one official set of records of its proceedings and actions.

(b) The State Board of Insurance shall determine policy, rules, rates and appeals but otherwise it shall execute its duties through the Commissioner of Insurance as herein provided for, in accordance with the laws of this state and the rules and regulations for uniform application as made by the Board.

(c) All rules and regulations for the conduct and execution of the duties and functions of the State Board of Insurance shall be rules for general and uniform application and shall be made and published by the Board on the basis of a systematic organization of such rules by their subject matter and content. The Commissioner of Insurance may make recommendations to the Board regarding such rules and regulations, including amendments, changes and additions. Such published rules shall be kept current and shall be available in a form convenient to all interested persons.

(d) Any person or organization, private or public, which is affected by any ruling or action of the Commissioner of Insurance shall have the right to have such ruling or action reviewed by the State Board of Insurance by making an application to the Board. Such application shall state the identities of the parties, the ruling or action complained of, the interests of the parties in such ruling, the grounds of such objection, the action sought of the Board and the reasons and grounds for such action by the Board. The original shall be filed with the Chief Clerk of the Board together with a certification that a true and correct copy of such application has been filed with the Commissioner of Insurance. Within thirty (30) days after the application is filed, and

after ten (10) days written notice to all parties of record, the Board shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The Board shall make such other rules and regulations with regard to such applications and their consideration as it deems advisable, not inconsistent with this Article. Said application shall have precedence over all other business of a different nature pending before the Board.

In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the Board, whether included in the application or not.

(e) The State Board of Insurance, in any proceedings, alleging violations of the provisions specified in this Code that grant the State Board of Insurance authority to suspend or cancel a license or certificate of authority, may, by alternative order, permit the holder of such license or certificate of authority to elect in writing to pay a specified money penalty, within a specified time, in lieu of the suspension of such license or certificate of authority. If the holder so elects, the sum of money specified shall be deposited with the State Treasurer to the credit of the General Revenue Fund. The sum specified shall not exceed \$10,000. Should the holder so electing fail to pay the specified sum within the specified time the State Board of Insurance shall, unless its order be lawfully stayed, put in effect the alternative specified in its order.

The authority vested in the State Board of Insurance by this Article shall be additional to and not in lieu of any other authority to enforce any penalties, fines, forfeitures, denials, suspensions, restrictions, or revocations of certificates of authority otherwise authorized by law.

(f) If any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied company or party at interest after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending.

The Board shall not be required to give any appeal bond in any cause arising hereunder.

(g) In making examinations of any insurance organization as provided by law, the Board may use its own salaried examiners or may employ any holder of a permit to practice public accountancy in Texas who is engaged as an independent public accountant in the public practice as that term is known and understood in the accounting profession. Such examination shall cover the period of time which the Board shall request. In the event the Board does not specify a longer period of time, such examination shall be from the time of the last examination theretofore made by the Board to December 31st of the year preceding the examination then being made and such public accountants shall so certify the period being examined by him. Any such public accountant shall be paid for such examination at the usual and customary rates charged by public accountants for similar services. Such payment shall be made by the insurance organization being examined and all such examination fees so paid shall be allowed as a credit on the amount of premium or other taxes to be paid by any such insurance organization for the taxable year during which examination fees are paid just as examination fees are credited when the Board uses its own salaried examiners.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 1035, ch. 391, § 3; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1961, 57th Leg., p. 566, ch. 264, § 2; Acts 1973, 63rd Leg., p. 1571, ch. 564, § 1, eff. June 15, 1973.]

#### Art. 1.05. Bond and Compensation

(a) Each of the members of the State Board of Insurance shall, before entering upon the duties of this office, give a bond to the State of Texas, executed by a surety company licensed to do business in the State of Texas, in a sum of Fifty Thousand Dollars (\$50,000.00), to be approved by the Governor, conditioned upon the faithful discharge of the duties of his office.

(b) The members of the State Board of Insurance shall receive an annual salary of not to exceed Twenty Thousand Dollars (\$20,000.00) payable in monthly installments as provided in the General Appropriation Bill.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1961, 57th Leg., p. 566, ch. 264, § 1.]

#### Art. 1.06. Ineligibility

No person who is a stockholder, director, officer, attorney, agent, or employee of any insurance company, insurance agent, insurance broker, or insurance adjuster, or who is in any way directly or indirectly interested in any such business, shall be a member of the State Board of Insurance, be Commissioner of Insurance, or be appointed to, or accept, any office or employment under said Board or Commissioner of Insurance; provided, however, that such ineligibility shall not extend or apply to persons who are merely insured by an insurer, or are merely

beneficiaries of such insurance; or who, in their official capacity, are appointed as a receiver, liquidator, or conservator for an insurer.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

#### Art. 1.07. Industrial Accident Board

Nothing in this Code shall be construed to in any manner affect the duties now imposed by law on the Industrial Accident Board or to take from said board the performance of the duties now imposed on said board by law.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

#### Art. 1.08. Office of the Clerk

(a) The Board shall appoint a Chief Clerk of the State Board of Insurance. The Chief Clerk shall have the responsibility of keeping and maintaining all records and proceedings of the Board.

(b) The Board may make any appropriate provisions by rules as to method or form by which any records or proceedings are kept and maintained, such as, but not limited to, providing for the mechanical or electrical recording of hearings or meetings in a phonographic transcription form and the photographing or microphotographing of written records or other materials.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 1; Acts 1955, 54th Leg., p. 826, ch. 307, § 1; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

#### Art. 1.09. Commissioner of Insurance

(a) The Board shall appoint a Commissioner of Insurance, by and with the advice and consent of the Senate of Texas, who shall be its chief executive and administrative officer, who shall be charged with the primary responsibility of administering, enforcing, and carrying out the provisions of the Insurance Code under the supervision of the Board. He shall hold his position at the pleasure of the Board and may be discharged at any time.

(b) The Commissioner of Insurance shall be the State Fire Marshal and shall function as such subject to the rules and regulations of the Board.

(c) The Commissioner of Insurance shall be a resident citizen of Texas, for at least one (1) year prior to his appointment and shall be a competent and experienced administrator who shall be well informed and qualified in the field of insurance and insurance regulation. He shall have had at least ten (10) years of administrative or professional experience, and shall have had training and experience in the field of insurance or insurance regulation. No former or present member of the Board of Insurance Commissioners shall be appointed Commissioner of Insurance.

(d) The Commissioner of Insurance shall first give a bond to the State of Texas, executed by a surety company licensed to do business in the State of Texas, in the sum of Fifty Thousand Dollars (\$50,000.00), to be approved by the Board, conditioned

upon the faithful discharge of the duties of his office.

(e) Compensation to be paid the Commissioner of Insurance shall be such sum as is provided for by the appropriation Acts.

(f) The Commissioner of Insurance or his representative shall meet with the Board in an advisory capacity and without vote in the proceedings of the Board. He shall submit such reports to the Board as it may request or provide for by its rules and regulations.

(g) The Commissioner of Insurance shall appoint such deputies, assistants, and other personnel as are necessary to carry out the duties and functions devolving upon him and the State Board of Insurance under the Insurance Code of this state, subject to the authorization by the Legislature in its appropriations bills or otherwise, and to the rules of the Board.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

#### Art. 1.09-1. Represented by the Attorney General

(a) The State Board of Insurance, and the Commissioner of Insurance, shall be represented and advised by the Attorney General in all legal matters before them or in which they shall be interested or concerned. The Board and Commissioner of Insurance shall not employ or obtain any other legal services without the written approval of the Attorney General.

(b) In all rate hearings and policy form proceedings before the Board or the Commissioner of Insurance, the Attorney General may intervene in the public interest. The Board shall have and exercise the power of subpoena and subpoena duces tecum for witnesses, documents, and other evidence to the extent of the jurisdiction of this state for such hearings and proceedings on its own motion or upon application of the Attorney General.

[Acts 1957, 55th Leg., p. 1454, ch. 499, § 3.]

#### Art. 1.09-2. Eligibility to Run for Public Office

(a) The members of the State Board of Insurance and the Commissioner of Insurance shall be ineligible to run for any public office, or to have their names placed on the official ballot for any office in any election in this state, except and unless such Board member or Commissioner of Insurance has resigned and his resignation has been accepted by the Governor.

[Acts 1957, 55th Leg., p. 1454, ch. 499, § 4.]

#### Art. 1.09-3. Certain Acts Shall be Unlawful

All members of the State Board of Insurance, Commissioner of Insurance, and all employees and agents of the State Board of Insurance shall be subject to the code of ethics and the standard of conduct imposed by Chapter 100, Acts of the Fifty-fifth Legislature, Regular Session, 1957.<sup>1</sup>

[Acts 1957, 55th Leg., p. 1454, ch. 499, § 5; Acts 1961, 57th Leg., p. 1171, ch. 526, § 1.]

<sup>1</sup> Civil Statutes, art. 6252-9.

**Art. 1.10. Duties of the Board**

In addition to the other duties required of the Board, it shall perform duties as follows:

**Shall Execute the Laws**

1. See that all laws respecting insurance and insurance companies are faithfully executed.

**File Articles of Incorporation and Other Papers**

2. File and preserve in its office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with the Board and, upon application of any party interested therein, furnish certified copies thereof upon payment of the fees prescribed by law.

**Shall Calculate Reserve**

3. For every company transacting any kind of insurance business in this State, for which no basis is prescribed by law, the Board shall calculate the reinsurance reserve upon the same basis prescribed in Article 6.01 of this code as to companies transacting fire insurance business.

**To Calculate Re-insurance Reserve**

4. On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the Board shall have calculated in its office the re-insurance reserve for all unexpired risks of all insurance companies organized under the laws of this state, or transacting business in this state, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, which calculation shall be in accordance with the provisions of Paragraph 3 hereof.

**When a Company's Surplus is Impaired**

5. Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this State, and adding thereto all other debts and claims against the company, the Board shall, in case it finds the minimum surplus required of the company doing the kind or kinds of insurance business set out in its Certificate of Authority impaired to the extent of more than fifty (50%) per cent of said required minimum surplus of a capital stock insurance company, or in case it finds the minimum surplus of a reciprocal, mutual other than a farm mutual, or finds the minimum required aggregate of guaranty fund and surplus of a Lloyd's company, other than life, doing the kind or kinds of insurance business set out in its Certificate of Authority impaired to the extent of more than sixteen and two-thirds (16 $\frac{2}{3}$ %) per cent of said required minimum surplus, give notice to the company to make good the impairment of its surplus to the extent that said impairment shall exist to a greater extent than

such applicable per cent, within sixty (60) days, and if this is not done, the Board shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under authority of the State, immediately institute legal proceedings to determine what further shall be done in the case. No impairment of the capital stock of a company shall be permitted. No impairment of the surplus of a company shall be permitted in excess of that above set out.

**Shall Publish Results of Investigation**

6. The Board shall publish the result of its examination of the affairs of any company whenever the Board deems it for the interest of the public.

**Shall Suspend or Revoke Certificate**

7. The Board shall suspend the entire business of any company of this State, and the business within this State of any other company, during its non-compliance with any provision of the laws relative to insurance, or when its business is being fraudulently conducted, by suspending or revoking the certificate granted by it. The Board shall give notice thereof to the Insurance Commissioner or other similar officer of every state, and shall publish notice thereof. The Board shall give such company at least ten (10) days' notice in writing of its intention to suspend the company's right to do business or revoke the certificate of authority granted by it, stating specifically the reason why the Board intends such action.

**Report to Attorney General**

8. It shall report promptly and in detail to the Attorney General any violation of law relative to insurance companies or the business of insurance.

**Shall Furnish Blanks**

9. It shall furnish to the companies required to report to the Board the necessary blank forms for the statements required.

**Shall Keep Records**

10. It shall preserve in a permanent form a full record of its proceedings and a concise statement of the condition of each company or agency visited or examined.

**Give Certified Copies**

11. At the request of any person, and on the payment of the legal fee, the Board shall give certified copies of any record or papers in its office, when it deems it not prejudicial to public interest and shall give such other certificates as are provided for by law.

## Report to Governor

12. It shall report annually to the Governor the names and compensations of its clerks, the receipts and expenses of its department for the year, its official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department.

## Send Copies of Reports To

13. It shall send a copy of such annual reports to the Insurance Commissioner or other similar officer of every state and to each company doing business in the State.

## Report Laws to Other States

14. On request, it shall communicate to the Insurance Commissioner or other similar officer of any other state, in which the substantial provisions of the law of this State relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this State doing business within such other state.

## See That No Company Does Business

15. It shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado, or inland insurance business, and that no company authorized to do a life insurance business in this State be permitted to take fire, marine or inland risks.

## Admit Mutual Companies

16. The Board shall admit into this State mutual insurance companies engaged in cyclone, tornado, hail and storm insurance which are organized under the laws of other states and which have Two Hundred Thousand (\$200,000.00) Dollars assets in excess of liabilities.

## Voluntary Deposits

17. (a) In the event any insurance company organized and doing business under the provisions of this Code shall be required by any other state, country or province as a requirement for permission to do an insurance business therein to make or maintain a deposit with an officer of any state, country, or province, such company, at its discretion, may voluntarily deposit with the State Treasurer such securities as may be approved by the Commissioner of Insurance to be of the type and character authorized by law to be legal investments for such company, or cash, in any amount sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and hold it exclusively for the protection of all policyholders or creditors of the company wherever they may be located, or for the protec-

tion of the policyholders or creditors of a particular state, country or province, as may be designated by such company at the time of making such deposit. The company may, at its option, withdraw such deposit or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and of equal amount and value to those withdrawn, which withdrawal and substitution must be approved by the Commissioner of Insurance. The proper officer of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the State Treasurer and the Commissioner of Insurance. Any deposit so made for the protection of policyholders or creditors of a particular state, country or province shall not be withdrawn, except by substitution as provided above, by the company, except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding or potential policyholder liabilities or obligations in such other state, country or province requiring such deposit, and upon the filing of such evidence the company may withdraw such deposit at any time upon the approval of the Commissioner of Insurance. Any deposit so made for the protection of all policyholders or creditors wherever they may be located shall not be withdrawn, except by substitution as provided above, by the company except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company does not have any unsecured liabilities outstanding or potential policy liabilities or obligations anywhere, and upon filing such evidence the company may withdraw such deposit upon the approval of the Commissioner of Insurance. For the purpose of state, county and municipal taxation, the situs of any securities deposited with the State Treasurer hereunder shall be in the city and county where the principal business office of such company is fixed by its charter.

(b) Any voluntary deposit now held by the State Treasurer or State Board of Insurance heretofore made by any insurance company in this State, and which deposit was made for the purpose of gaining admission to another state, may be considered, at the option of such company, to be hereinafter held under the provisions of this Act.

(c) When two or more companies merge or consolidate or enter a total reinsurance contract by which the ceding company is dissolved and its assets acquired and liabilities assumed by the surviving company, and the companies have on deposit with the State Treasurer two or more deposits made for identical purposes under ei-

ther Section 17 of Article 1.10 of the Texas Insurance Code, as amended, or Article 4739, Revised Civil Statutes of Texas (1925), as amended, and now repealed, all such deposits, except the deposit of greatest amount and value, may be withdrawn by the new surviving or reinsuring company, upon proper showing of duplication of such deposits and that the company is the owner thereof.

(d) Any company which has made a deposit or deposits under Article 1.10, Section 17, Texas Insurance Code, as amended, or Article 4739, Revised Civil Statutes of Texas (1925), as amended and now repealed, shall be entitled to a return of such deposits upon proper application therefor and a showing before the Commissioner that such deposit or deposits are no longer required under the laws of any state, country or province in which such company sought or gained admission to do business upon the strength of a certificate of such deposit by the State Board of Insurance or its predecessor.

(e) Upon being furnished a certified copy of the Commissioner's order issued under Subsection (c) or (d) above, the Treasurer of the State of Texas shall release, transfer and deliver such deposit or deposits to the owner as directed in said order.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 2; Acts 1959, 56th Leg., p. 280, ch. 157, § 1; Acts 1959, 56th Leg., p. 637, ch. 291, § 3; Acts 1967, 60th Leg., p. 1825, ch. 705, §§ 1 to 3, eff. Aug. 28, 1967.]

#### Art. 1.11. May Change Form of Annual Statement

The Board may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to it best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 1.12. When Parties Refuse to Testify

If any person refuses to appear and testify or to give information authorized by this chapter to be demanded by the Board, such Board may file the sworn application of any member thereof with any district judge or district court within this State, where said witness is summoned to appear, and said judge shall summon said witness and require answers to such questions.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 1.13. Officers Shall Execute Service

Peace officers shall execute process directed to them by the Board and make return thereof to it, as in the case of process issued from any court.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 1.14. Shall Issue Certificate of Authority

Sec. 1. No individual, group of individuals, association or corporation, unless now or hereafter other-

wise permitted by statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this state. Should the State Board of Insurance be satisfied that any insurance carrier applying for a certificate of authority has in all respects fully complied with the law, it shall be its duty to issue to such carrier a certificate of authority, under its seal, authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance. Each such certificate of authority heretofore or hereafter issued shall be in full force and effect until it is revoked, canceled or suspended according to law; provided, however, that failure to file any annual statement required by law will subject the certificate of authority to being revoked, canceled or suspended.

Sec. 2. The word "Carrier" as herein used is defined as that type of insurer which, in consideration of premium, issues policies to others insuring against those losses which may be insured against under the provisions of the law, including stock companies, reciprocals or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide assessment associations, local mutual aids, burial associations, and county and farm mutual fire associations. Provided that the Board of Insurance Commissioners shall give preference to applications of domestic companies in checking and approving annual statements and issuing Certificates of Authority.

Sec. 3. The Board may inquire into the competence, fitness and reputation of the officers and directors of each carrier. If, after inquiry, and based on substantial evidence, it shall appear to the Board that such officers and directors, or any of them, are not worthy of the public confidence, it shall give such carrier notice in writing of its intention to refuse the application for Certificate of Authority, or to revoke the certificate once granted, stating specifically why the Board intends such action, and the place and time for hearing by the Board, not sooner than ten (10) days nor later than twenty (20) days thereafter.

After notice and hearing, the Board shall forthwith record in its official minutes its findings and order, which shall be subject to full review in a suit filed in a District Court in Travis County. The filing of such suit shall operate as a stay of the Board's order until the court directs otherwise. The court shall consider all of the facts, and shall hear, try and determine said suit de novo as other civil cases. The court may modify, affirm or set aside the action of the Board in whole or in part, and shall enter such judgment as the evidence introduced in court may warrant, including an order directing the Board to take such action as may be justified. Provided, however, that fraternal benefit societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of

Texas or which are now exempt under the provisions of Article 10.12 or Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 3; Acts 1955, 54th Leg., p. 826, ch. 307, § 2; Acts 1959, 56th Leg., p. 434, ch. 194, § 1.]

Section 2 of the 1959 amendatory act provided: "All laws and parts of laws in conflict herewith are hereby expressly repealed, including but not limited to Articles 1.14, 3.06, 3.08, 3.57, 8.20, 9.10, 10.22, 11.02, 14.17, and 20.02, of the Insurance Code to the extent that they require periodic renewal of certificates of authority; provided, however, that nothing herein shall repeal any provision of law requiring the payment of annual license fees."

### Art. 1.14-1. Unauthorized Insurance

#### Purpose

Sec. 1. The purpose of this Article is to subject certain persons and insurers to the jurisdiction of the State Board of Insurance, of proceedings before the Board, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The Legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the Legislature herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the State Board of Insurance to enforce or effect full compliance with the insurance and tax statutes of this state, and declares in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of P.L. 79-15 (1945), (Chapter 20, 1st Sess., S. 340), 59 Stats. 33, as amended,<sup>1</sup> which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

#### Insurance Business Defined

Sec. 2. (a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the

matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term insurer as used in this Article includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.
7. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.
8. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.
9. Any other transactions of business in this state by an insurer.

(b) The provisions of this section do not apply to:

1. The lawful transaction of surplus lines insurance.
2. The lawful transaction of reinsurance by insurers.

3. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article.

5. Transactions in this state involving group life, health or accident insurance (other than credit insurance) and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business and such transactions are authorized by other statutes of this state.

#### Unauthorized Insurance Prohibited

Sec. 3. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in this Article except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state this section shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

#### Service of Process on Commissioner

Sec. 4. (a) Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the Commissioner of Insurance, his successor or successors in office to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit or proceeding in any court arising out of doing an insurance business in this state by such person or insurer, except in an action, suit or proceeding by the State Board of Insurance or by the state. Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer shall be signification of its agreement that any such legal process so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process shall be made by leaving two copies thereof in the hands or office of the Commissioner of Insurance. A certificate by the Commissioner showing such service and attached to

the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the Commissioner as such attorney shall be service upon the principal.

(c) The Commissioner shall forthwith mail one copy of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him which shall show the day and hour of service. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) Service of process in any such action, suit or proceeding shall, in addition to the manner provided in Paragraphs (b) and (c), be valid if served upon any person within this state who on behalf of such unauthorized person or insurer is doing any act of an insurance business as set forth in this Article and if a copy of such process is sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(e) No plaintiff or complainant shall be entitled to a judgment by default in any action, suit or proceeding in which the process is served under this subsection until the expiration of 45 days from the date of filing of the affidavit of compliance.

(f) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any person or insurer in any other manner now or hereafter permitted by law.

#### Service of Process on Secretary of State

Sec. 5. (a) Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in inter-

est if a corporation, of the Secretary of State, his successor or successors in office to be the true and lawful attorney of such person or insurers upon whom may be served all legal process in any action, suit or proceeding in any court by the State Board of Insurance or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the State Board of Insurance and which arises out of doing an insurance business in this state by such person or insurer. Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit or proceeding and any such notice, order, pleading or process in such administrative proceeding before the State Board of Insurance so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process in such action, suit or proceeding in any court or such notice, order, pleading or process in such administrative proceeding authorized by Paragraph (a) shall be made by leaving two copies thereof in the hands or office of the Secretary of State. A certificate by the Secretary of State showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the Secretary of State as such attorney shall be service upon the principal.

(c) The Secretary of State shall forthwith mail one copy of such court process or such notice, order, pleading or process in proceedings before the State Board of Insurance to the defendant in such court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided notice of such service and a copy of the court process or the notice, order, pleading or process in such administrative proceeding are sent within 10 days thereafter by registered mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the State Board of Insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business of the defendant in the court or administrative proceeding, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney in court proceeding or of the State Board of Insurance in administrative proceeding, showing compliance herewith are filed with the clerk of the court in which such action, suit or

proceeding is pending or with the State Board of Insurance in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or the State Board of Insurance may allow.

(d) No plaintiff or complainant shall be entitled to a judgment or determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the State Board of Insurance is served under this section until the expiration of 45 days from the date of filing of the affidavit of compliance.

(e) Nothing contained in this section shall limit or abridge the right to serve any process, notice, order, pleading or demand upon any person or insurer in any other manner now or hereafter permitted by law.

(f) The Attorney General upon request of the State Board of Insurance is authorized to proceed in the courts of this or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the State Board of Insurance.

#### Unauthorized Person or Insurer Defense of Action

Sec. 6. (a) Before any unauthorized person or insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in such administrative proceeding before the State Board of Insurance instituted against such person or insurer, by service made as provided in Sections 4 and 5, such person or insurer shall either:

1. Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the State Board of Insurance in administrative proceedings before the State Board of Insurance, cash or securities or bond with good and sufficient sureties to be approved by the court or the State Board of Insurance, in an amount to be fixed by the court or the State Board of Insurance sufficient to secure the payment of any final judgment which may be rendered in such court proceeding or in such administrative proceeding before the State Board of Insurance, provided that the court or the State Board of Insurance in administrative proceedings before the State Board of Insurance may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court or the State Board of Insurance that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such court action, suit or proceeding or in such administrative proceeding before the State Board of Insurance; or

2. Procure proper authorization to do an insurance business in this state.

(b) The court in any action, suit or proceeding in which service is made as provided in Section 4 or the State Board of Insurance in any administrative proceeding before the State Board of Insurance in which service is made as provided in Section 5, may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with Paragraph (a) and to defend such court action or administrative proceeding.

(c) Nothing in Paragraph (a) is to be construed to prevent an unauthorized person or insurer from filing a motion to quash a writ or to set aside service thereof made as provided in Sections 4 or 5 on the ground that such unauthorized person or insurer has not done any of the acts enumerated in this Article or that the person on whom service was made pursuant to Section 4(d) was not doing any of the acts therein enumerated.

#### Attorneys' Fees

Sec. 7. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

#### Validity of Insurance Contracts

Sec. 8. Except for lawfully procured surplus lines insurance and contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article or Article 1.14-2, any contract of insurance effective in this state and entered into by an unauthorized insurer is unenforceable by such insurer. In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount thereof pursuant to the provisions of such insurance contract.

#### Investigation and Disclosure of Insurance Contracts

Sec. 9. (a) Whenever the State Board of Insurance has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the State Board of Insurance shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the

State Board of Insurance the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation or effectuation of such insurance.

(b) Every person who, for 30 days after such written order pursuant to Paragraph (a), neglects to comply with the requirements of such order or who wilfully makes a disclosure that is untrue, deceptive or misleading shall forfeit \$50 and an additional \$50 for each day of neglect after expiration of said 30 days.

#### Reporting of Unauthorized Insurance

Sec. 10. (a) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the State Board of Insurance every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

(b) This section does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

#### Unauthorized Insurance Premium Tax

Sec. 11. (a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to this Article or Article 1.14-2, every unauthorized insurer shall pay to the State Board of Insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 3.85 percent of gross premiums charged for such insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premiums which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

*Independently Procured Insurance*

Sec. 12. (a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued or renewed, file a report of the same with the State Board of Insurance in writing and upon forms designated by the State Board of Insurance and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the State Board of Insurance.

(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).

(c) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed, pay the amount of the tax to the State Board of Insurance. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the State Board of Insurance within the time stated in Paragraph (c). If the tax prescribed by this subsection is not paid within the time stated in Paragraph (c), the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(f) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This section shall not be construed or deemed to abrogate or modify any provision of this Article. This section does not apply as to individual life or individual disability insurance.

*Exception in Respect of Filing of Reports of Taxes Due*

Sec. 12A. As respects corporations, the Franchise Tax Report filed with the Comptroller of Public Accounts will report the amount of taxes due and payable to the State of Texas under the provisions or under authority of Section 12 of this Article, and such taxes shall not be due until the Franchise Tax Report is due, any other provision of this Article to the contrary notwithstanding. All companies or persons other than corporations filing franchise tax returns shall report to the State Board of Insurance.

*Penalty for Unauthorized Insurance*

Sec. 13. (a) Any unauthorized insurer who does any unauthorized act of an insurance business as set forth in this Article shall be fined not more than \$5,000.

(b) In addition to any other penalty provided for herein or otherwise provided by law, any person or insurer violating this Article shall forfeit to this state the sum of \$500 for the first offense and an additional sum of \$500 for each month during which any such person or insurer continues such violation.

*Unconstitutional Application Prohibited*

Sec. 14. This Article and law does not apply to any insurer or other person to whom, under the

Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

[Acts 1967, 60th Leg., p. 401, ch. 185, § 1, eff. May 12, 1967; Acts 1969, 61st Leg., p. 2298, ch. 775, § 1, eff. June 14, 1969.]

<sup>1</sup> See 15 U.S.C.A. § 1011 et seq.

Section 2 of Acts 1967, 60th Leg., p. 401, ch. 185 is codified as article 1.14-2, section 3 of the act of 1967 is a severability provision and is set out as a note under article 1.14-2, and section 4 of the act, set out as a note under article 1.14-2, repealed conflicting laws, including article 21.38, made licenses issued thereunder effective until expiration according to their terms, and made taxes which, accrued under article 21.38, payable at rates in accordance with article 21.38 as they existed before the act of 1967 became effective.

## Art. 1.14-2. Surplus Lines Insurance

### Purpose

Sec. 1. Insurance transactions which are entered into by citizens of this state with unauthorized insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers are a matter of public interest. The Legislature declares that such transaction of surplus lines insurance is a subject of concern and that it is necessary to provide for the regulation, taxation, supervision and control of such transactions and the practices and matters related thereto by requiring appropriate standards and reports concerning the placement of such insurance; by imposing requirements necessary to make such regulation and control reasonably complete and effective; by providing orderly access to insurers that are not authorized to transact the business of insurance in this state; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting authorized insurers, which under the laws of this state must meet strict standards as to the regulation of the business of insurance and the taxation thereof, from unfair competition by unauthorized insurers. In order to properly regulate and tax such unauthorized insurance within the meaning and intent of P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33,<sup>1</sup> the Legislature herein provides an orderly method for the insuring public of this state to effect insurance with unauthorized insurers through qualified, licensed and supervised surplus line agents in this state and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state to the extent that the coverage is not procurable from duly licensed, regulated insurers conducting business in this state.

### Definitions, Classification, and Qualification

Sec. 2. (a) (1) "Surplus lines agent" (i) is an agent authorized under Article 21.14 who is granted a surplus lines license in accordance with this Article, or (ii) is a managing general agent (authorized to be licensed and licensed under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, codified by Vernon as Article 21.07-3) who is granted a surplus lines license in accordance with this Article and who complies with the provisions of this Article, except it is not necessary that the managing general agent be licensed as a recording agent.

(2) Each "surplus lines agent," as a condition of being licensed as a surplus lines agent and as a condition of continuing to be licensed as a surplus lines agent, shall offer proof of financial solvency and demonstrate capacity in respect of responsibility to insureds under policies of surplus lines insurance, or in the alternative show proof of adequate bond and surety in respect of his transactions with insureds under policies of surplus lines insurance and as the reasonable rules and regulations of the State Board of Insurance shall provide.

(3) Any surplus lines license granted to an agency authorized under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, that is not also licensed under Article 21.14 of the Insurance Code shall be limited to the acceptance of business originating through a regularly licensed recording agent and shall not authorize such surplus lines agency to transact business directly with the applicant for insurance.

(4) The State Board of Insurance is authorized to classify surplus lines agents and to issue licenses to surplus lines agents in accordance with such classification and as the reasonable rules and regulations of the Board shall prescribe.

(b) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this Article.

### Surplus Lines Insurance Authorized

Sec. 3. (a) If insurance coverages of subjects resident, located or to be performed in this state cannot be procured from licensed insurers after diligent effort, such coverages, hereinafter designated as surplus line insurance, may be procured from unauthorized insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines under Section 5.
2. The insurer must be an eligible surplus lines insurer under Section 8.
3. The insurance must be placed through a licensed Texas surplus lines agent resident in this state.
4. The other applicable provisions of this section must be complied with.

(b) Any insurance of subjects resident, located or to be performed in this state, procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).

### Surplus Lines Agent's License

Sec. 4. (a) The State Board of Insurance may issue a surplus lines license to any authorized agent which shall grant such agent authority to procure the kinds of insurance provided for in this Article

from companies not licensed in this state under the conditions prescribed in this Article. Every license issued pursuant to this section shall be for a term expiring on the 31st day of December next following the date of issuance and may be renewed for ensuing periods of 12 months. Before any such license shall be issued and before each renewal thereof a written application shall be filed by the applicant in such form as the State Board of Insurance prescribes and the fee provided therefor by this Article shall be paid.

(b) The fee for the issuance of a surplus lines license shall be \$25.00, which fee shall be placed in the separate fund that is provided pursuant to Section 21 of Article 21.14 of the Insurance Code. No diminution of the license fee herein provided shall occur as to any license effective after January 1 of any year.

#### Eligibility for Surplus Lines Insurance

Sec. 5. (a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall be only the amount in excess of the amount so procurable from licensed insurers.

(b) Policy or contract forms shall not be eligible unless the use is reasonably necessary for the principal purposes of the coverage or unless the use would not be contrary to the purposes of this Article with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

#### Procedure for Effecting Surplus Lines Contracts

Sec. 6. (a) Before any new or renewal insurance shall be procured in an unlicensed insurer the agent shall make an affidavit, which shall be promptly filed with the State Board of Insurance, that he is after diligent effort unable to procure from any licensed insurer or insurers the full amount of insurance required to protect the interest of the insured. If the annual premiums paid by the insured for such surplus lines coverage exceed \$25,000, the insured may execute the affidavit in lieu of the surplus lines agent.

(b) Upon placing a new or renewal surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured or his agent, as the case may be, evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note or other confirmation of insurance.

(c) Within 60 days after the effectuation of any new or renewal surplus lines insurance the surplus lines agent shall file with the State Board of Insurance an exact copy of the policy issued. If a policy

has not been issued, the surplus lines agent shall so file an exact copy of his certificate, cover note or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the State Board of Insurance an exact copy of any substitute certificate, cover note or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the State Board of Insurance as to the substance of any change represented by such substitute certificate, cover note or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued. Except, however, as respects this Subsection (c), equivalent information may be filed as required by the Board.

(d) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(e) If after the delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this Article if originally issued on such basis.

(f) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note or confirmation theretofore issued.

#### Requirements for Surplus Lines Contracts

Sec. 7. (a) Every new or renewal insurance contract certificate, cover note or other confirmation of insurance procured and delivered as a surplus line coverage pursuant to this Article shall bear the name and address of the insurance agent who procured it and shall have stamped or affixed upon it the following: "This insurance contract is with an

insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Texas insurance statutes. Article 1.14-2, Texas Insurance Code, requires payment of 3.85 percent tax on gross premium."

(b) Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

#### Eligibility of Surplus Lines Insurers

Sec. 8. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The agent shall make a reasonable effort to ascertain the financial condition of the unauthorized insurer before placing insurance therewith. An insurer shall not be eligible unless it has capital and surplus or its equivalent that is adequate in relation to its premium writings and the exposure it assumes.

(b) The unauthorized insurer must be of good repute and provide reasonably prompt service to its policyholders in the payment of just losses and claims.

(c) No unauthorized insurer shall be eligible if the management is incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public; or if the State Board of Insurance has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(d) No unauthorized insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. The State Board of Insurance may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

(e) No new or renewal surplus lines insurance shall be placed with any surplus lines insurer which requires as a condition precedent to writing such new or renewal insurance that the prospective insured or the insured place other insurance not eligible as surplus lines insurance with such surplus lines insurer.

(f) This section shall not be deemed to cast upon the State Board of Insurance any duty or responsibility to determine the actual financial condition or claims practice of any unauthorized insurer.

#### Validity of Contracts

Sec. 9. (a) Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this Article shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers.

(b) A contract of insurance placed in effect by an unauthorized insurer in violation of this Article is unenforceable by the insurer. The insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

#### Liability of Surplus Lines Insurer for Losses and Unearned Premiums

Sec. 10. If the surplus lines insurer has assumed the risk in accordance with this Article and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause. Each surplus lines insurer assuming a surplus lines risk under this Article shall be deemed thereby to have subjected itself to the terms of this subsection.

#### Actions Against Insurer; Service of Process

Sec. 11. A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided for unauthorized insurers in Article 1.14-1. Any such policy issued by the insurer, or any certificate of insurance issued by the surplus lines agent, shall contain a provision stating the substance of this section and designating the person to whom the Commissioner of Insurance shall mail process. Each surplus lines insurer assuming a surplus lines risk pursuant to this Article shall be deemed thereby to have subjected itself to the terms of this section. This section shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

#### Surplus Lines Insurance Premium Tax

Sec. 12. (a) The premiums charged for surplus lines insurance are subject to a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The surplus lines agent shall collect from the insured the amount

of the tax at the time of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall report, under oath, to the State Board of Insurance within 30 days from the 1st day of January and July of each year the amount of gross premiums paid for such insurance placed through him in nonlicensed insurers, and shall pay to the Board the tax provided for by this Article. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(b) All surplus lines premium receipt taxes collected by a surplus lines agent are trust funds in his hands and the property of this state. Such funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium receipts tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses such money or any portions thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether any such surplus lines agent has or claims to have any interest in such money so received by him.

(c) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium receipts tax money and penalties due the state from such surplus lines agent shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

(d) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal court or agency to recover such license fees or tax not paid within the time prescribed in this section.

#### Surplus Lines Agents May Advertise

Sec. 13. Any agent who is granted a surplus lines license in accordance with this Article may bring announcements or statements before the public in respect to his ability to place such surplus lines insurance as may be permitted by this Article.

#### Surplus Lines Agents' Commissions

Sec. 14. Agents licensed in accordance with this Article may not pay the whole or any part of the commission on surplus lines insurance to any person, except that such commissions may be shared or divided with any other licensed agent.

#### Records of Surplus Lines Agent

Sec. 15. (a) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

1. Amount of the insurance and perils insured against;
2. Brief general description of property insured and where located;
3. Gross premium charged;
4. Return premium paid, if any;
5. Rate of premium charged upon the several items of property;
6. Effective date of the contract, and the terms thereof;
7. Name and post office address of the insured;
8. Name and home office address of the insurer;
9. Amount collected from the insured; and
10. Other information as may be required by the State Board of Insurance.

(b) The record shall at all times be open to examination by the State Board of Insurance without notice, and shall be so kept available and open to the State Board of Insurance for three years next following expiration or cancellation of the contract.

#### Annual Report of Surplus Lines Agent

Sec. 16. Each surplus lines agent shall, before March 1 in each year, make a report to the State Board of Insurance for the preceding calendar year, on the form prescribed by it, of such facts as it requires and including a showing that the amount of insurance procured from such unauthorized insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

#### Penalty

Sec. 17. Any violation of this section shall subject the agent to suspension of his agent's license for a period of not less than 90 days and a fine of not more than \$500.

## Unconstitutional Application Prohibited

Sec. 18. This Article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

[Acts 1967, 60th Leg., p. 408, ch. 185, § 2, eff. May 12, 1967; Acts 1969, 61st Leg., p. 2121, ch. 725, § 1, eff. June 12, 1969.]

<sup>1</sup> See 15 U.S.C.A. § 1011 et seq.

Section 1 of Acts 1967, 60th Leg., p. 401, ch. 185 is codified as article 1.14-1; sections 3 and 4 of the act of 1967 provided:

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions and applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. All laws or parts of laws in conflict herewith, including Article 21.38 of the Insurance Code, are hereby repealed; provided, however, licenses heretofore issued under authority of Article 21.38 shall remain in effect, subject to the provisions of Article 21.38 before this amendment, until they expire according to their terms; and provided further that all taxes which have accrued under Article 21.38 before this amendment shall be payable at the rates and in accordance with the provisions of Article 21.38 as they existed before this amendment became effective."

**Art. 1.15. To Examine Carriers**

Sec. 1. The State Board of Insurance shall, once in each six (6) months for the first three (3) years after organization or incorporation, once in each year for the fourth through sixth years after organization or incorporation and thereafter once in each three (3) years, or oftener, if the Board deems necessary, in person or by one or more examiners commissioned by such Board in writing, visit each carrier organized under the laws of this state and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting the conduct of its business; and such Board shall similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representatives of the insurance supervising departments of other states, each insurance carrier not organized under the laws of this state but authorized to transact business in this state. Such Board or its commissioned examiners shall have free access to all the books and papers of the carrier or agents thereof relating to the business and affairs of such carrier, and shall have power to summon and examine under oath the officers, agents, and employees of such carrier and any other person within the state relative to the affairs of such carrier. Such Board may revoke or modify any certificate of authority issued by such Board or by any predecessor in office when any condition or requirement prescribed by law for granting it no longer exists. Such Board shall give such company at least ten (10) days written notice of its intention to revoke or modify such certificate of authority stating specifically the reason for the action it proposes to take.

Sec. 2. The State Board of Insurance in administering any provision of the Insurance Code, Acts 1951, 51st Legislature, Chapter 491, shall be authorized and empowered in determining "value" or "market value" of any investment in or upon real estate or the improvements thereon by any carrier authorized to do business in the State of Texas to

consider any and all matters and things relating thereto, including but not restricted to, appraisals by real estate boards or other qualified persons, affidavits by other persons familiar with such values, tax valuations, cost of acquisition, with proper deductions for depreciation and obsolescence, cost of replacement, sales of other comparable property, enhancement in value from whatever cause, income received or to be received, improvements made or any other factor or any other evidence which to said Board may be deemed proper and material.

Sec. 3. Any insurer whose investment in or upon real estate or the improvements thereon may have been determined or found by said Board shall be entitled to make a written request to the Board for a written finding by the Board; and upon such request being made to the Board, the Board shall, within ten (10) days after receipt of such request, enter its written order or finding setting out separately its finding upon each factor or matter upon which its said determination or finding of "value" or "market value" was made and shall in such written order or finding give the names and addresses of all persons who furnished such evidence as to each such matter, factor or thing and upon whom the Board relied in making such determination or finding and shall deliver a copy of such written finding or order to the carrier so requesting the same.

Sec. 4. Any rule, regulation, order, decision or finding of the Board under this Act shall be subject to full review in any suit filed by any interested party in any District Court of the State of Texas in Travis County, Texas, and not elsewhere. The filing of such suit shall operate as a stay of any such rule, regulation, order, decision or finding of the Board until the court directs otherwise. The court may review all the facts, shall hear, try and determine said suit de novo as other civil cases in said court; and in disposing of the issues before it, may modify, affirm, or reverse the action of the Board in whole or in part.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 826, ch. 307, § 3; 1965, 59th Leg., p. 309, ch. 141, § 1.]

**Art. 1.16. Expenses of Examinations; Disposition of Sums Collected**

The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the Board of Insurance Commissioners or under its authority shall be paid by the corporations examined in such amount as the Board of Insurance Commissioners shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the

Board of Insurance Commissioners upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected only at the time such examinations are made.

All sums collected by the Board of Insurance Commissioners, or under its authority, on account of the cost of examinations assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the Board of Insurance Commissioners and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the Board of Insurance Commissioners by warrant of the Comptroller drawn upon such fund in the State Treasury.

If at any time it shall appear that additional pro rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Article and Articles 1.17 and 1.18 of this Code, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Board of Insurance Commissioners, and shall consist of the examiners' remuneration and expenses, and the other expenses of the Department of Insurance properly allocable to the examination. Payment shall be made directly to the Board of Insurance Commissioners, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the Board of Insurance Commissioners to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the Board of Insurance Commissioners, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Board of Insurance Commissioners; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company

under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Board of Insurance Commissioners shall fix the remuneration and expense allowance of the examiners at such reasonable figure as it may determine.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 826, ch. 307, § 4.]

**Art. 1.17. Appointment of Examiners and Assistants and Actuary by Board of Insurance Commissioners; Salaries**

The Board of Insurance Commissioners shall appoint such number of examiners, one of whom shall be the chief examiner, and such number of assistants as it may deem necessary for the purpose of making on behalf of the State of Texas and of the Board of Insurance Commissioners all such examinations of insurance companies, at the expense of such companies or corporations, as are required to be made or provided for by law; and it shall also appoint an actuary to the Board of Insurance Commissioners to advise the Board in connection with the performance of its duties and for aid and advice and counsel in connection with all such examinations required by law. Such examiners and assistants shall, as directed by the Board of Insurance Commissioners, perform all the duties relative to all examinations provided by law to be made by the Board of Insurance Commissioners of the State of Texas, and it is the purpose of this Article and Articles 1.16 and 1.18 of this Code to provide for the examination hereunder by the Board of Insurance Commissioners of all corporations, firms or persons engaged in the business of writing insurance of any kind in this State whether now subject to the supervision of the Insurance Department or not.

All such examiners and assistants and such actuary shall hold office subject to the will of the Board of Insurance Commissioners and the number of such examiners and assistants may be increased or decreased from time to time to suit the needs of the examining work. The actuary and all such examiners and assistants shall be paid out of the Insurance Examination Fund, such salaries as shall be fixed from time to time by the Legislature, and their necessary traveling expenses shall be paid out of said Fund upon sworn, itemized accounts thereof, to be rendered monthly and approved by the Board of Insurance Commissioners before payment.

Where the Board of Insurance Commissioners shall deem it advisable it may commission the actuary of the Board, the chief examiner, or any other examiner or employee of the Department, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examinations. Other than as thus provided, neither the actuary of the Board of Insur-

ance Commissioners nor any examiner or assistant shall continue to serve as such if, while holding such position, he shall directly or indirectly accept from any insurance company any employment or pay or compensation or gratuity on account of any service rendered or to be rendered on any account whatsoever.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 826, ch. 307, § 5.]

**Art. 1.18. Oath and Bond of Examiners and Assistants; Action on Bond for False Reports**

Each examiner and assistant examiner, before entering upon the duties of his appointment shall take and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly, for the discharge of his duty, other than the remuneration fixed and accorded to him by law; and that he will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm or person examined by him, to anyone except the Members of the Board of Insurance Commissioners, or their authorized representative, or when required as witness in Court.

Every such examiner shall enter into a bond payable to the State in the sum of Ten Thousand Dollars (\$10,000) and every assistant examiner shall enter into a bond in the sum of Five Thousand Dollars (\$5,000), to be approved by the Board of Insurance Commissioners and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner.

In case any such examiner or assistant examiner shall knowingly make any false report or give any information in violation of law relative to any such examination of any corporation, firm or person so examined, any such corporation, firm or person shall have a right of action on such bond for his injuries in a suit brought in the name of the State at the relation of the injured party.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 826, ch. 307, § 6.]

**Art. 1.19. In Case of Examination**

The Board of Insurance Commissioners for the purpose of examination authorized by law, has power either in person or by one or more examiners by it commissioned in writing:

1. To require free access to all books and papers within this State of any insurance companies, or the agents thereof, doing business within this State.

2. To summon and examine any person within this State, under oath, which it or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this State, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this State refusing to permit such examination. The reasonable expenses of all such examination shall be paid by the company examined.

The Board may revoke or modify any certificate of authority issued by it when any conditions prescribed by law for granting it no longer exist.

The Board shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the law of this State relating to insurance. No action shall be brought or maintained by any person other than the Board for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 826, ch. 307, § 7.]

**Art. 1.20. Transfer of Securities by Board**

No transfer by the Board of securities of any kind, in any way held by it, shall be valid unless countersigned by the State Treasurer.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 1.21. Duty of State Treasurer**

It is the duty of the State Treasurer:

1. To countersign any such transfer presented to him by the Board.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the Legislature to state the transfers and the amount thereof, countersigned by him.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 1.22. Free Access to Records**

To verify the correctness of records, the Board shall be entitled to free access to the Treasurer's records, required by the preceding article, and the Treasurer shall be entitled to free access to the books and other documents of the Insurance Department relating to securities held by the Board.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 1.23. Instruments and Copies as Evidence**

Every instrument executed by any member of the Board of Insurance Commissioners, or by the Commissioner of Insurance of any other state or by an officer of any other state having a title of similar import, relating to insurance and which has been or shall be executed pursuant to authority conferred by

law, and authenticated by the seal of office of the Board or such other officer executing the instrument, shall be received as evidence; and copies of papers and records in the office of the Board or in the office of such other officer, certified by a member of the Board if the paper or record is in the office of the Board or by such other officer in whose office such papers or records are found, and authenticated by the appropriate seal of office, shall be received as evidence with the same effect as the originals.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 1.24. To Make Inquiries of Company

The Board is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which the Board may deem necessary for the public good or for a proper discharge of its duties. It shall be the duty of the addressee to promptly answer such inquiries in writing.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 1.25. Annual Statement to Legislature

The Board shall cause the information contained in the annual statement of companies to be arranged in tabular form and prepare the same for printing in a single document and submit the same to the Legislature as a portion of its regular report to that body.

[Acts 1951, 52nd Leg., ch. 491.]

#### Arts. 1.26, 1.26-1. Repealed by Acts 1971, 62nd Leg., p. 1069, ch. 222, § 2, eff. Aug. 30, 1971

Article 1.26 provided for mortgage guaranty insurance and article 1.26-1 provided for the right to engage in such business, and were derived from Acts 1963, 58th Leg., p. 1318, ch. 504, § 1 and Acts 1967, 60th Leg., p. 466, ch. 211, §§ 1, 2.

See, now, article 21.50.

#### Art. 1.27. [Blank]

#### Art. 1.28. [Blank]

#### Art. 1.29. Prohibited Activities of Officers, Directors and Certain Shareholders

Sec. 1. (a) No director or officer of any insurance company transacting business in or organized under the laws of this State, and no person who is directly or indirectly the beneficial owner of more than 10% of any class of equity security of any such insurance company, shall receive, except as permitted by this Article, any money or valuable thing, either directly or indirectly or through any substantial interest in any other corporation, firm or business unit for negotiating, procuring, recommending or aiding in any purchase, sale or exchange of property or loan, made by any such company or any subsidiary thereof; nor shall he be pecuniarily interested, either as principal, co-principal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation, firm or business unit, in any such purchase, sale, exchange or loan; nor shall such company make any loan to or guarantee the financial obligation of any such director, officer or shareholder, either directly or indirect-

ly, or through its subsidiaries, nor shall any such director, officer or shareholder accept any such loan or guarantee either directly or indirectly.

(b) "Person," as used herein, shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

"Subsidiary," as used herein shall mean any corporation in which an insurance company owns 50% or more of any class of equity securities of such corporation, or which is managed by or is directly or indirectly controlled by or is subject to control by an insurance company.

"Insurance company," as used herein, shall include and mean capital stock companies, reciprocal or inter-insurance exchanges, Lloyd's companies, fraternal benefit societies, mutual and mutual assessment associations, local mutual aids, local mutual burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of this Code, mutual life insurance companies, mutual insurance companies other than life, stipulated premium companies, title insurance companies, and all other insurers transacting an insurance business in this State.

(c) Nothing in this Article shall be construed as prohibiting the following:

(1) Any such director, officer or shareholder from becoming a policyholder of the insurance company and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurance company and to which he may be eligible under the terms of such plan; or prohibit any such director, officer or shareholder from receiving salaries, bonuses and other remuneration for services rendered to the insurance company as an employee and not in violation of other provisions of the Insurance Code.

(2) Professional services performed by such directors for duties not placed by law upon a director and director's fees and expense reimbursement for the performance of their duties as directors.

(3) The approval and payment of lawful dividends to policyholders and shareholders.

(4) Any other arms-length transaction not forbidden by other statutes between such directors, officers and shareholders and such insurance company, provided such transactions are approved prior to the making thereof by the Commissioner of Insurance.

(5) (A) Any transactions within an insurance holding company system by insurers with their holding companies, subsidiaries or affiliates that are not prohibited by law, that meet the test of

being fair and proper, and that are regulated by other statutes; and (B) other transactions or arrangements not prohibited by law that meet the test of being fair and proper as prescribed by rules and regulations adopted by the State Board of Insurance.

Sec. 2. The provisions of this Article are applicable to all insurance companies subject to regulation by the Insurance Code and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the Code are not in limitation of the provisions of this Article, and in the event of conflict between this Article and any other article of the Code or in the event of any ambiguity the provisions of this Article shall govern.

[Acts 1971, 62nd Leg., p. 3404, ch. 1037, § 1, eff. June 16, 1971.]

Section 2 of the 1971 act provided: "Severance Clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

## CHAPTER TWO. INCORPORATION OF INSURANCE COMPANIES

### Article

- 2.01. Formation of Company.
- 2.02. Articles of Incorporation.
- 2.03. Amendments to Charters.
- 2.03-1. Live Stock Insurance Companies; Exemption from Act.
- 2.04. Original Examination and Application for Charter.
- 2.05. Oath as to Charter and Capital.
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### Art. 2.01. Formation of Company

The provisions of this Chapter shall apply to the formation of each company or organization which proposes to engage in any kind of insurance business, other than life, health or accident insurance companies organized or operating under the provisions of Chapters 3, 10, 11, 12, 13 or 14 of this Code; and except as in this Code otherwise provided.

Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign Articles of Incorporation as provided in this Code. Applicants shall file with the Board an application for charter on such form and

include therein such information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05, and the proposed Articles of Incorporation or of Association, and shall deposit with the Board the fees prescribed by law.

Upon receipt of such application, the Board may set a date for the hearing of the same notifying all interested parties by notice published in one or more daily newspapers of this State of the place and date thereof, which date shall be not less than ten (10) nor more than thirty (30) days after the date of such notice.

A copy of such notice shall be given to the Attorney General of Texas. A representative of the Attorney General shall attend such hearing. The original examination report provided by Article 2.04 shall be a part of the record of the hearing.

In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;
2. The proposed officers and directors, attorney in fact or managing head have sufficient insurance experience, ability, standing and good record to render success of the proposed insurance company probable;
3. The applicants are acting in good faith.

Should the Board by an affirmative finding determine any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise such Board shall approve the application and submit the same to the Attorney General. If the Articles and the record and the procedure and action thereon shall be found by the Attorney General to be in accordance with the law of this State, and if he shall find that the applicants have complied with all applicable requirements of this Code, he shall attach thereto his certificate to that effect, whereupon such Articles shall be deposited with the Board in the office of its Chairman.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 4.]

### Art. 2.02. Articles of Incorporation

Such Articles of Incorporation shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;
2. The locality of the principal business office of such company;
3. The kind of insurance business in which the company proposes to engage; for the purposes of determining the amount of capital and surplus required under this Code of a capital stock company, or the amount of surplus required of a mutual company, reciprocal exchange, or the amount of guaranty fund and

surplus required of a Lloyds, full coverage automobile insurance shall be construed as one line of casualty insurance;

4. The amount of its capital stock and its surplus, which shall in no case be less than \$100,000.00 capital and \$50,000.00 surplus in the event the company is incorporated to engage in the business of fire insurance and its allied lines, or marine insurance, or both, and which in no case shall be less than \$150,000.00 capital and \$75,000.00 surplus if the company is incorporated to engage in the casualty insurance business, including fidelity, guaranty, surety and trust business, and which in no case shall be less than \$200,000.00 capital and \$100,000.00 surplus in the event the company is incorporated to engage in the business of fire insurance and its allied lines, or marine insurance, or both fire and marine insurance, and the business of casualty insurance.

At the time of incorporation all of said capital and surplus shall be in cash.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 5.]

#### Art. 2.03. Amendments to Charters

Any domestic insurance corporation subject to the provisions of this Chapter may make amendments to its charter as follows:

Applicants shall file with the Board the proposed amendment together with an application on such form and including such information as may be prescribed by the Board, and shall deposit with the Board the fees prescribed by law. Upon such filing the Board may give notice by publication in one or more daily newspapers of this State of a public hearing upon such application, copy of such notice to be delivered to the Attorney General, and the representative of the Attorney General to appear at such hearing; provided that no hearing shall be required in event amendment to charter involves only a stock dividend by means of lawful transfer of surplus to capital or a change of name or a change of locality of the principal business office of said company or a combination of such amendments.

In considering any such application, the Board may hold public hearings and shall within 30 days determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;
2. The then officers and directors and managing head have sufficient insurance experience, ability, standing and good record to render success of the company probable;
3. The applicants are acting in good faith;
4. If an amendment to charter involves a diminution of the company's charter powers with respect to the kinds of insurance business in which it may engage, in the manner prescribed by this Code, that all liabilities incident

to the exercise of the powers to be eliminated have been terminated or wholly reinsured;

5. The property involved in any increase of capital or surplus or both is properly valued and is as authorized by Article 2.08 or Article 2.10 of this Code, as same may be applicable.

Should the Board determine any of the above issues adversely to the applicants, it shall reject the application. Otherwise the Board shall approve the application and shall forward the application, the amendment, and complete files relating to the charter and the charter amendment, as well as its findings and the record thereof to the Attorney General for examination. If said amendment shall be found by the Attorney General to be in accordance with the law of this State, he shall attach thereto his certificate to that effect, whereupon such amendment shall be deposited with the Board in the office of its Chairman, and shall become effective.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 6.]

#### Art. 2.03-1. Live Stock Insurance Companies; Exemption from Act

Live stock insurance companies organized prior to April 1, 1955 under the provisions of Article 2.03 of the Insurance Code and continuing to do a live stock insurance business only shall be exempt from the provisions of this Act.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 12a.]

#### Art. 2.04. Original Examination and Application for Charter

When the Articles of Incorporation and Application for Charter of persons desiring to form a company under this Chapter have been deposited with the Board, and the law in all other respects has been complied with by the company, prior to the hearing provided by Article 2.01, the Board shall make or cause an examination to be made by some competent and disinterested person or persons appointed by them for that purpose; and if it shall be found that the capital stock and surplus of the company, to the amount required by law, has been paid in, and is possessed by it, in money, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, the examiners or examiner shall so report to the Board.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 7.]

#### Art. 2.05. Oath as to Charter and Capital

The incorporators or officers of any such company shall be required to certify under oath to the Board the truth and correctness of the facts set out in the Articles of Incorporation and in addition shall certify under oath to the Board that the capital and surplus is the bona fide property of such company.

If the Board is not satisfied in either event above, it may at the expense of the incorporators require other satisfactory evidence before it shall be re-

quired to receive the Articles of Incorporation, or application for charter, or give notice of hearing or hold same, or issue original Certificate of Authority, but may not delay the giving of notice of such hearing for more than ten days.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 8.]

#### Art. 2.06. Certificate of Examiner

If the examination be made by one, other than the Chairman, the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Chairman of the Board.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 2.07. Shares of Stock

##### Division

Sec. 1. (a) The shares of any insurance company organized under the laws of this State, if shares with a nominal or par value, shall be divided into shares of not less than One Dollar (\$1) each, and not more than One Hundred Dollars (\$100) each and the stockholders of any such company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value before said company shall be chartered or have its charter amended so as to authorize the issuance of shares with a nominal or par value. At the time of filing of an original charter or any amendment of an existing charter authorizing issuance of stock of a nominal or par value, the company shall file a statement under oath with the State Board of Insurance setting forth the aggregate number of shares with a nominal or par value subscribed and the actual aggregate consideration received by the company for such shares. Any and all such shares with a nominal or par value issued in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. The consideration received for such shares shall constitute capital to the extent of the par value of such share, and the excess, if any, of such consideration shall constitute surplus. In no event shall the capital or surplus be less than the minimum required by this Chapter.

(b) In the event all of the shares with a nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares with nominal or par value are sold and issued, the company shall file with the State Board of Insurance, within ninety (90) days after the issuance of such shares a certificate authenticated by the majority of the directors setting forth the aggregate number of such additional shares so issued and the

actual aggregate consideration received by the company for such shares. The consideration received for such shares shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. No further act on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company.

(c) The aggregate number of shares which the company has authority to issue may be increased or decreased from time to time by lawful charter amendment as long as shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value is in good faith subscribed and paid for in full.

(d) The privileges and powers conferred by this Article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to such companies; provided, however, life, health, or accident insurance companies operating under Chapter 3 of this Code<sup>1</sup> shall not utilize the provisions of this Article but shall comply with the provisions of Chapter 3 of this Code as amended.

##### Nominal or Par Value Shares; Conditions of Issuance

Sec. 2. Upon the incorporation or upon the amendment of the charter in the manner now or hereafter provided by law, of any insurance company organized under the laws of this State, provision may be made for the issuance of shares of its stock without a nominal or par value. Every such share shall be equal in all respects to every other such share; provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty (50) per cent of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further that in no event shall the amount so paid be less than Two Hundred Fifty Thousand (\$250,000.00) Dollars.

##### Disposition of Authorized Capital Stock; Nominal or Par Value Shares Fully Paid and Unassessable

Sec. 3. Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, bonds, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment

thereon, nor shall the subscriber or holder be liable for any further payments.

Filing Certificate and Articles of Incorporation; Approval of Attorney General; Fee

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Board at the time of the filing of the charter or amendment to the charter, authorizing the issuance of such stock, a certificate authenticated by the incorporators as to the original charter and by a majority of the directors as to an amendment, setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares, and upon receiving such certificate, together with a charter fee of Twenty-five (\$25.00) Dollars, it shall be the duty of the Board to submit such certificate and the articles of incorporation to the Attorney General for examination; and if he approves the same as conforming with law, he shall so certify and deliver same to the Chairman of the Board, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of One (\$1.00) Dollar, he shall furnish a certified copy of the charter to the incorporators or of the amendment to the directors, and same shall be effective. In case of original incorporation, said companies shall proceed to organize in the manner now provided by law for the organization of insurance companies.

Certificate Covering Shares of Nominal or No Par Value Sold or Issued

Sec. 5. In the event all of the shares of stock without nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares of stock without nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares. That portion of the consideration received by the company for such shares and fixed by the Board of Directors, unless the charter or articles of incorporation reserve to the shareholders the right to fix the consideration, shall constitute capital, and the excess, if any, of such consideration shall constitute surplus. No further action on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company. The consideration received for such shares shall be the same as that required by Article 2.03, Section 5 of this Code.

Powers Granted Additional to Existing Powers

Sec. 6. The privileges and powers conferred by this article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the

powers now permitted to such companies; provided, however, life, health or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of this article but shall comply with the provisions of Chapter 3 of this Code as amended.

Purchase of Capital Stock in Accordance With Texas Business Corporation Act; Approval by State Board of Insurance

Sec. 7. (a) Any such company desiring to purchase, either by tender offer or through negotiated private transaction, issued and outstanding shares of the capital stock of such company may purchase said shares in the name of such company, in accordance with the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall specify the number of shares offered, their description, the price offered by the company, the book value of said shares, their market value if a market exists, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. A copy of said application shall be given to the seller prior to the filing of said application with the State Board of Insurance. Said application shall be promptly approved by the State Board of Insurance if the application appears to involve a reasonably fair price and complies with this Article and the Texas Business Corporation Act.

(b) Any such company, the shares of whose capital stock are listed on a national securities exchange and which desires to purchase in its own name and for its own account issued and outstanding shares of such capital stock by means of purchases from time to time on the open market may do so in accordance with the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall state the maximum number of shares which will be so purchased, the maximum period of time during which such purchases of shares will be made (not to exceed one hundred eighty days), the description of such shares, a commitment by the company that it will not pay for any such shares a price in excess of the mean between the bid price and the asked price at the time of such purchase plus a standard broker's commission, the book value of said shares, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. Said application shall be promptly approved by the State Board of Insurance if the said application complies with this Article and the Texas Business Corporation Act.

(c) No provision of this article shall be deemed to restrict or modify the provisions in the Insurance Code relative to transactions between an insurer and its affiliates, certain shareholders, directors and officers as defined and limited by Chapter 1037, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1.29, Vernon's Texas Insurance Code), and Chapter

356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2149-1,<sup>1</sup> Vernon's Texas Insurance Code), as the same now exist or may be amended in the future.

(d) An application for purchase of an insurer's own shares under the provisions of this article shall be deemed to be tantamount to an application for an extraordinary dividend under the provisions of said Article 21.49-1 of the Insurance Code and the application for such purchase shall be subject to and limited by the substantive requirements for approval of payment of an extraordinary dividend under said Article 21.49-1 of the Insurance Code as the same exists or may be amended in the future.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 1; Acts 1957, 55th Leg., p. 87, ch. 41, § 1; Acts 1961, 57th Leg., p. 1112, ch. 503, §§ 1, 1a; Acts 1967, 60th Leg., p. 721, ch. 301, § 2, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 252, ch. 121, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> So in enrolled bill: probably should read "21.49-1."

Section 2 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 2.08. Items of Minimum Capital Stock and Minimum Surplus

The minimum capital stock and minimum surplus of any such insurance company, except any writing life, health and accident insurance shall, following incorporation and granting of certificate of authority, consist only of the following:

1. Lawful money of the United States; or
2. Bonds of this state; or
3. Bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; or
4. Notes secured by first mortgages upon unencumbered real estate in this state, the title to which is valid, and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies, provided that such investments in such notes shall not exceed one-half (½) of the minimum capital stock and minimum surplus of the investing company; or
5. Bonds or other interest-bearing evidences of indebtedness of any counties, cities or other municipalities of this state.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 9; Acts 1959, 56th Leg., p. 250, ch. 145, § 1; Acts 1961, 57th Leg., p. 979, ch. 426, § 1.]

#### Art. 2.09. Re-investment of Capital Stock

Any such company may exchange and re-invest its capital stock in like securities, as occasion may require.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 2.10. Investment of Funds in Excess of Minimum Capital and Minimum Surplus

No company except any writing life, health and accident insurance, organized under the laws of this state, shall invest its funds over and above its minimum capital and its minimum surplus, as provided in Article 2.02, except as otherwise provided in this Code, in any other manner than as follows:

1. As provided for the investment of its minimum capital and its minimum surplus in Article 2.08;

2. In bonds or other evidences of debt which at the time of purchase are interest-bearing and are issued by authority of law and are not in default as to principal or interest, of any of the States of the United States or in the stock of any National Bank, in stock of any State Bank of Texas whose deposits are insured by the Federal Deposit Insurance Corporation; provided, however, that if said funds are invested in the stock of a State Bank of Texas that not more than thirty-five per cent (35%) of the total outstanding stock of any one (1) State Bank of Texas may be so purchased by any one (1) insurance company; and provided further, that neither the insurance company whose funds are invested in said bank stock nor any other insurance company may invest its funds in the remaining stock of any such State Bank;

3. In bonds or first liens or first mortgages upon unencumbered<sup>1</sup> real estate in this state or in any other state, country or province in which such company may be duly licensed to conduct an insurance business, the title to which is valid and the market value of which is not less than forty per cent (40%) more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least sixty per cent (60%) of the value thereof provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below sixty per cent (60%) of the value of the buildings, the loss clause shall be payable to such company. The provisions of this paragraph with respect to the value of real estate compared to the amount loaned thereon shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator or successors. The valuation of such real estate where the loan is not insured by the Federal Housing Administrator shall be by appraisal by two (2) or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, the cost and expense of such appraisal to be paid by the insurance company to the Board, as amended Acts 1959, 56th Legislature, page 96, Chapter 49, Section 1;

4. In bonds or other interest-bearing evidences of debt of any county, municipality, road

district, turnpike district or authority, water district, any subdivision of a county, incorporated city, town, school district, sanitary or navigation district, any municipally owned revenue water system or sewer system where special revenues to meet the principal and interest payments of such municipally owned revenue water system and sewer system bonds or other evidences of debt shall have been appropriated, pledged or otherwise provided for by such municipality. Provided, before bonds or other evidences of debt of navigation districts shall be eligible investments such navigation district shall be located in whole or in part in a county containing a population of not less than 100,000 according to the last preceding Federal Census; and provided further, that the interest due on such navigation bonds or other evidences of debt of navigation districts must never have been defaulted;

5. In the stocks, bonds, debentures, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation at time of purchase, incorporated under the laws of this state, or of any other State of the United States, or of the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years, immediately preceding the date of the investment; provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation organized under the laws of this state, unless such corporation has at the time of investment a net worth of not less than \$250,000.00 nor in the stock of any oil, manufacturing or mercantile corporation, not organized under the laws of this state, unless such corporation has a combined capital, surplus and undivided profits of not less than \$2,500,000.00; provided further:

(a) Any such insurance company may invest its funds over and above its minimum capital stock, its minimum surplus, and all reserves required by law, in the stocks, bonds or debentures of any solvent corporation organized under the laws of this state, or of any other State of the United States, or of the United States.

(b) No such insurance company shall invest any of its funds in its own stock or in any stock on account of which the holders or owners thereof may, in any event, be or become liable to any assessment, except for taxes.

(c) No such insurance company shall invest any of its funds in stocks, bonds or other securities issued by a corporation if a majority of the stock having voting powers of such issuing corporation is owned, directly or indirectly, by or for the benefit of one or more officers or directors of such insur-

ance company; provided, however, that this Section shall not apply to any insurance company which has been in continuous operation for five (5) years.

6. In loans upon the pledge of any mortgage, stock, bonds or other evidence of indebtedness acceptable as investments under the terms of this Article, if the current value of such mortgage, stock, bonds or other evidence of indebtedness is at least twenty-five per cent (25%) more than the amount loaned thereon;

7. In interest-bearing notes or bonds of The University of Texas issued under and by virtue of Chapter 40, Acts of the 43rd Legislature, Second Called Session;<sup>2</sup>

8. In real estate to the extent only as elsewhere authorized by this Code;

9. In insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of the 47th Legislature;<sup>3</sup> in shares or share accounts as authorized in Section 1, page 76, Acts 1939, 46th Legislature;<sup>4</sup> in insured or guaranteed obligations as authorized in Chapter 230, page 315, Acts 1945, 49th Legislature;<sup>5</sup> in bonds issued under the provisions authorized by Section 9, Chapter 231, page 774, Acts 1933, 43rd Legislature;<sup>6</sup> in bonds under authority of Section 1, Chapter 1, page 427, Acts 1939, 46th Legislature;<sup>7</sup> in bonds and other indebtedness as authorized in Section 1, Chapter 3, page 494, Acts 1939, 46th Legislature;<sup>8</sup> in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature;<sup>9</sup> or in bonds as authorized by Section 5, Chapter 122, page 219, Acts 1949, 51st Legislature;<sup>10</sup> or in bonds as authorized by Section 10, Chapter 159, page 326, Acts 1949, 51st Legislature;<sup>11</sup> or in bonds as authorized by Section 19, Chapter 340, page 655, Acts 1949, 51st Legislature;<sup>12</sup> or in bonds as authorized by Section 10, Chapter 398, page 737, Acts 1949, 51st Legislature;<sup>13</sup> or in bonds as authorized by Section 18, Chapter 465, page 855, Acts 1949, 51st Legislature;<sup>14</sup> or in shares or share accounts authorized in Chapter 534, page 966, Acts 1949, 51st Legislature;<sup>15</sup> or in bonds as authorized by Section 24, Chapter 110, page 193, Acts 1949, 51st Legislature;<sup>16</sup> together with

<sup>1</sup> So in enrolled bill.  
<sup>2</sup> Civil Statutes, art. 2603d (repealed).  
<sup>3</sup> Civil Statutes, art. 842a.  
<sup>4</sup> Civil Statutes, art. 881a-24 (repealed; see, now, art. 852a, §§ 6.11, 6.12.)  
<sup>5</sup> Civil Statutes, art. 842a-1.  
<sup>6</sup> Civil Statutes, art. 1187a, § 9.  
<sup>7</sup> Civil Statutes, art. 1269k-1.  
<sup>8</sup> Civil Statutes, art. 5890c.  
<sup>9</sup> Civil Statutes, art. 7880-19a (repealed; see, now, Water Code, §§ 51.038, 51.039.)  
<sup>10</sup> Civil Statutes, art. 6795b-1, § 7b.  
<sup>11</sup> Civil Statutes, art. 8280-134, § 10.  
<sup>12</sup> Civil Statutes, art. 8280-137, § 19.  
<sup>13</sup> Civil Statutes, art. 8280-138, § 10.  
<sup>14</sup> Civil Statutes, art. 8280-139, § 18.  
<sup>15</sup> Civil Statutes, art. 881a-24 (repealed; see, now, art. 852a, §§ 6.11, 6.12.)  
<sup>16</sup> Civil Statutes, art. 8280-133, § 24.

such other investments as are now or may hereafter be specifically authorized by law.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 10; Acts 1959, 56th Leg., p. 96, ch. 49, § 1; Acts 1961, 57th Leg., p. 979, ch. 426, § 2.]

#### Art. 2.10-1. Additional Investment Authority

In addition to the securities authorized as investments in Article 2.10, a company may also invest its funds over and above its minimum capital and minimum surplus, as provided in Article 2.02, in bonds issued, assumed, or guaranteed by certain international financial institutions in which the United States is a member, to wit: the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank.

[Acts 1971, 62nd Leg., p. 1668, ch. 472, § 1, eff. Aug. 30, 1971.]

#### Art. 2.10-2. Further Investment Authority for Companies Doing Business in Foreign Countries

In addition to the securities authorized as investments by Article 2.10 of the Insurance Code, any insurer subject to the provisions of Article 2.10 of the Insurance Code that is authorized by the law of a foreign country to engage in a line or lines of insurance which the insurer is authorized to transact in this state may invest in the same kinds of foreign securities originating in such foreign country as would be authorized by Article 2.10 of the Insurance Code (as the same now exists or may be amended in the future) for domestic securities originating in the United States of America; provided, however, that the aggregate investment made under the provisions of this Article in any one country shall not exceed by more than 10% at any time the lesser of the following amounts:

(a) The funds required by the law of the foreign country to be maintained in securities originating in such country.

(b) The total unearned premium reserves, reinsurance reserves, loss reserves and other liabilities, if any, required by the law of this state to be carried by the insurer that are directly attributable to the particular policies or contracts of insurance on residents or property located in the foreign country.

Provided, however, this Article shall not constitute authority to invest in foreign securities originating in any foreign country where the President of the United States or other federal authority is authorized but has refused to issue on projects in the country guarantees to citizens or corporations of the United States of America guaranteeing against loss by reason of inconvertibility of currency, expropriation, confiscation, war, revolution or insurrection because of the omission or failure of such foreign country to enter into arrangements for the security of Ameri-

can property required by the federal authority for the issuance of such guarantees.

[Acts 1973, 63rd Leg., p. 1300, ch. 490, § 1, eff. June 14, 1973.]

#### Art. 2.11. Directors

The affairs of any insurance companies organized under the laws of this state shall be managed by not fewer than seven (7) directors. Within thirty (30) days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one (1) vote. The directors then in office shall continue in office until their successors have been duly chosen and accepted the trust. The annual meeting for the election of directors of any such company shall be held on or before April 30 of each year as the bylaws of the company may direct. Neither directors nor officers need be stockholders unless the Articles of Incorporation or bylaws so require.

[Acts 1951, 52nd Leg., ch. 491; Acts 1961, 57th Leg., p. 440, ch. 214, § 1; Acts 1965, 59th Leg., p. 396, ch. 195, § 1.]

#### Art. 2.12. Special Meeting to Elect Directors

If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty (30) days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 2.13. Quorum of Stockholders

Except as may be otherwise provided in this code, no meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to fifty-one percent of the stock of such company.

[Acts 1951, 52nd Leg., ch. 491; Acts 1973, 63rd Leg., p. 251, ch. 120, § 1, eff. May 18, 1973.]

Sections 2 and 3 of the 1973 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of the conflict only.

"Sec. 3. If any provision of this Act is declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining provisions of this Act, and they shall remain in full force and effect."

#### Art. 2.14. Directors Shall Choose Officers

The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be either a director or a stockholder except as required by the bylaws of such company. Officers shall perform such duties, receive such compensation and give such security as the bylaws may require.

[Acts 1951, 52nd Leg., ch. 491; Acts 1959, 56th Leg., p. 639, ch. 292, § 1.]

**Art. 2.15. May Ordain By-Laws**

The directors may establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 2.16. Business Records**

The directors shall keep a full and correct record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 2.17. Shall Fill Vacancies; Quorum**

The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 2.18. Governed by Other Laws**

The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this Code. None of the provisions of this Chapter 2 shall apply to insurance companies organized or operating under the provisions of Chapter 3 or Chapter 11 of this Code, and Chapters 10, 12, 13, or 14 of this Code. [Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 2.]

**Art. 2.19. Co-operative Savings Companies, Prohibited**

There shall not be incorporated any such Co-operative Savings and Contract Loan Companies as are mentioned in Acts of 1923 of the 38th Legislature, Chapter 157, page 336, being Article 4698, Revised Civil Statutes of 1925.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 2.20. Renewal Certificates of Authority**

Any domestic insurance company and any foreign or alien insurance company heretofore organized and doing business in Texas as an authorized fire or casualty insurer, or both, at the effective date of this Act, and which does not have the minimum capital or the minimum surplus, or both, required by Article 2.02 of this Code subject to the provisions of Section 5 of Article 1.10 of this Code may continue to transact the kind or kinds of insurance business for which it held Certificate of Authority on such date until said certificate expires by its terms or is revoked or suspended according to law, provided that on December 31, 1959, it shall have increased its capital or its surplus, or both, as required by law by fifty (50%) per cent of the difference between the capital or surplus or both existing on December 31, 1954, and the capital or surplus or both required by Article 2.02 of this Code subject to the provisions of Section 5 of Article 1.10 of this Code before it shall

be entitled to obtain Renewal Certificate or Certificates of Authority as provided by law, after December 31, 1959; and provided further, that its investments made in compliance with law prior to the effective date hereof may be retained until December 31, 1959, after which date the provisions hereof as to investments must be fully met before it shall be entitled to obtain Renewal Certificate or Certificates of Authority as provided by law; and provided further, all such companies shall fully meet the requirements of Article 2.02 of this Code on and after December 31, 1964, subject to the provisions of Section 5 of Article 1.10 of this Code. No part of this Article shall apply to any farm mutual fire insurance company operating in Texas under the provisions of Chapter 16 of this Code at the effective date of this Act, or to any company now operating under Chapter 12 of Title 78, Revised Civil Statutes of Texas, which has heretofore been repealed. [Acts 1955, 54th Leg., p. 413, ch. 117, § 11.]

**Art. 2.21. Certificate of Authority**

When the said Articles of Incorporation have been deposited with the Board, or when the right to do business has been approved as provided by law, and the law in all other respects has been complied with by the company, the Board shall issue to such company a Certificate of Authority to commence business as proposed in their Articles of Incorporation or application or declaration.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 12.]

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SUBCHAPTER A. TERMS DEFINED;  
DOMESTIC COMPANIES

## Art. 3.01. Terms Defined

Sec. 1. A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities.

Sec. 2. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water.

Sec. 3. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill-health.

Sec. 4. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance.

Sec. 5. The term "domestic" company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State.

Sec. 6. The term "foreign company" means any life, accident or health insurance company organized under the laws of any other state or territory of the United States or foreign country.

Sec. 7. The term "home office" of a company means its principal office within the state or country in which it is incorporated and formed.

Sec. 8. The "insured" or "policyholder" is the person on whose life a policy of insurance is effected.

Sec. 9. The "beneficiary" is the person to whom a policy of insurance effected is payable.

Sec. 10. By the term "net assets" is meant the funds of the company available for the payment of its obligations in this state, including but not limited to:

(a) Uncollected premiums not more than three (3) months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims and claims for losses, and all other debts, exclusive of capital stock; and

(b) All electronic machines, constituting a data-processing system or systems, and all other office equipment, furniture, machines and labor-saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute less than five per cent (5%) of the otherwise admitted assets of such company; and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars (\$2,000), to qualify hereunder.

(c) The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and labor-saving devices as used in subsection (b), and provide for the maximum period for which each such class of equipment may be amortized.

(d) Companies regulated by the provisions of Chapter 14 of this Insurance Code, same being local mutual aid associations, local mutual burial associations and state-wide mutual assessment corporations, and companies regulated by the provisions of Chapter 22 of this Insurance Code, same being stipulated premium companies, may include among their admitted assets any asset herein designated as "net assets" except that companies regulated by the provisions of Chapter 14 of this Code may only include the same within the assets of the expense fund of any such company.

Sec. 11. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose required by law.

[Acts 1951, 52nd Leg., ch. 491; Acts 1961, 57th Leg., p. 1056, ch. 470, § 1; Acts 1963, 58th Leg., p. 185, ch. 105, § 1.]

### Art. 3.02. Who May Incorporate

Sec. 1. Any three or more citizens of this State may associate themselves for the purpose of forming

a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation and file the same in the office of the Board of Insurance Commissioners. Such articles shall specify:

1. The name and place of residence of each of the incorporators;

2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;

3. The location of its home office;

4. The kind or kinds of insurance business it proposes to transact;

5. The amount of its capital stock, not less than One Hundred Thousand (\$100,000.00) Dollars; all of which capital stock must be fully subscribed and fully paid up and in the hands of the incorporators before said articles of incorporation are filed. Such insurance company shall not be incorporated unless, at the time of incorporation, such company is possessed of at least One Hundred Thousand (\$100,000.00) Dollars surplus in addition to its capital; provided, the amount of such surplus need not be stated in its articles of incorporation. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate; provided, however, that fifty (50%) per cent of the minimum capital may be invested in first mortgage real estate loans. After the granting of charter the surplus may be invested as otherwise provided in this Code. Notwithstanding any other provisions of this Code, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article;

6. The period of time it is to exist, which shall not exceed five hundred years;

7. The number of shares of such capital stock;

8. Such other provisions not inconsistent with the law as the incorporators may deem proper to insert therein.

Sec. 2. From and after the effective date of this Act the capital and surplus requirements of Paragraph 5 of Section 1 of Article 3.02 of this Code shall be the minimum capital and surplus requirements for any company which is subject to the provisions of Chapter 3 of this Code as amended; provided,

however, that no such company which was licensed and doing such business in this State prior to May 15, 1955 shall be required to increase the amount or convert the class or form if its existing capital or surplus to comply with the capital and surplus requirements of said Paragraph 5 of Section 1 hereof, but such company shall comply with the requirements of Subsection (a) hereof;

(a) Until the capital and surplus of such company is at least One Hundred Thousand (\$100,000.00) Dollars, no such company shall insure any life for more than Twenty Thousand (\$20,000.00) Dollars in the event of death from natural causes nor more than Forty Thousand (\$40,000.00) Dollars in the event of death from accidental causes. Provided, however, that when the net capital and surplus of any such company is not more than Thirty-five Thousand (\$35,000.00) Dollars, the excess over One Thousand (\$1,000.00) Dollars natural death benefit and Two Thousand (\$2,000.00) Dollars accidental death benefit under any policy issued by it shall be reinsured in some legal reserve company licensed in Texas; that when the net capital and surplus is Thirty-five Thousand and One (\$35,001.00) Dollars to Fifty Thousand (\$50,000.00) Dollars, the natural death benefit over Two Thousand (\$2,000.00) Dollars and accidental death benefit over Four Thousand (\$4,000.00) Dollars shall be so reinsured; that when the net capital and surplus is Fifty Thousand and One (\$50,001.00) Dollars to Seventy-five Thousand (\$75,000.00) Dollars, the natural death benefit over Three Thousand (\$3,000.00) Dollars and accidental death benefit over Six Thousand (\$6,000.00) Dollars shall be so reinsured; and when the net capital and surplus is Seventy-five Thousand and One (\$75,001.00) Dollars to less than One Hundred Thousand (\$100,000.00) Dollars, the natural death benefit over Four Thousand (\$4,000.00) Dollars and accidental death benefit over Eight Thousand (\$8,000.00) Dollars shall be so reinsured.

Sec. 3. Every life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company incorporated or transacting such business in this State shall be subject to this Chapter 3 unless otherwise expressly provided by this Code.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 3.]

#### Art. 3.02a. Shares of Stock

(a) The shares of any life, health or accident insurance company organized or operating under the provisions of this Chapter may be divided or converted into shares of either par value or no par value, or some of each, and all issued shares shall be fully paid and nonassessable. If divided or converted into shares of par value, each share shall be for not less than One Dollar (\$1) nor more than One Hundred Dollars (\$100) and the stockholders of any such

company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal par value before said company shall be chartered or have its charter amended so as to authorize the issuance of shares with a nominal or par value. At the time of filing of an original charter or any amendment of an existing charter authorizing the issuance of stock with a nominal or par value, the company shall file a statement under oath with the State Board of Insurance setting forth the aggregate number of shares with a nominal or par value subscribed and the actual aggregate consideration received by the company for such shares. If divided or converted into shares of no par value, every such share shall be equal in all respects to every other such share. At the time of filing of an original charter or any amendment of an existing charter authorizing the issuance of stock with no par value, the company shall file a statement under oath with the State Board of Insurance setting forth the number of shares without par value subscribed and the actual consideration received by the company for such shares. Provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty per cent (50%) of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further, that in no event shall the amount so paid be less than Two Hundred Fifty Thousand Dollars (\$250,000). The aggregate number of shares which the company has authority to issue may be increased or decreased from time to time by lawful charter amendment so long as at least fifty per cent (50%) of the aggregate number of the authorized shares to be issued without nominal or par value is in good faith subscribed and paid for and so long as shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value has been in good faith subscribed and paid for in full; provided that authorized but unissued shares shall not constitute capital or stock or capital stock of such company.

(b) Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this Article shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. The consideration received for shares with a nominal or par value shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consider-

ation shall constitute surplus. In the case of issuance of shares without a nominal or par value, that portion of the consideration fixed by the Board of Directors, unless the charter or the articles of incorporation reserve to the shareholders the right to fix the consideration, shall constitute capital and the excess, if any, of such consideration shall constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. In no event shall the capital or surplus be less than the minimum required by this Chapter.

(c) In the event all of the shares without nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares without nominal or par value are sold and issued, the company shall file with the State Board of Insurance within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares. In the event all of the shares with a nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares with a nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the aggregate number of shares so issued and the actual aggregate consideration received by the company for such shares. In the case of the issuance by a company of any of its authorized shares having a nominal or par value, the consideration received therefor shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. In case of the issuance by a company of any of its authorized shares without a nominal or par value, that portion of the consideration fixed by the Board of Directors, unless the charter or articles of incorporation of the company reserve to the shareholders the right to fix the consideration, shall constitute capital, and the excess, if any, shall constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. No further action on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company.

(d) Nothing herein contained shall be construed to impair the charter rights of companies heretofore authorized to issue stock of no par value or par value.

[Acts 1955, 54th Leg., p. 916, ch. 363, § 4; Acts 1961, 57th Leg., p. 1112, ch. 503, § 2.]

### Art. 3.03. Repealed by Acts 1955, 54th Leg., p. 916, ch. 363, § 5

The repealed article was derived from: Acts 1951, 52nd Leg., ch. 491; R.S.1925, art. 4752 (Acts 1909, p. 210, § 56; R.S.1911, art. 4762) as amended by Acts 1941, 47th Leg., p. 797, ch. 495, § 1; Acts 1947, 50th Leg., p. 351, ch. 199, § 1.

For provisions relating to incorporation of insurance companies, see now art. 3.02.

### Art. 3.04. Application, Charter and Organization

Sec. 1. As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the Board of Insurance Commissioners the following:

1. An application for charter on such form and including therein such information as may be prescribed by the Board;

2. The articles of incorporation as provided in this Code;

3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than One Hundred Thousand Dollars (\$100,000) capital and that such company is possessed of at least One Hundred Thousand Dollars (\$100,000) surplus, as required by law, in addition to its capital; which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;

4. A charter fee of Twenty-five Dollars (\$25.00).

Sec. 2. When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the Board of Insurance Commissioners, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to the Attorney General of Texas and to all interested parties including any parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or

denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Sec. 3. In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

(a) The minimum capital and surplus, as required by law, is the bona fide property of the company;

(b) The proposed officers, directors and managing executive have sufficient insurance experience, ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith.

Sec. 4. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise, the Board shall approve the application and submit such application together with the articles of incorporation and the affidavit to the Attorney General for examination. If the application, articles of incorporation, the affidavit and the procedure and action thereon shall be found by the Attorney General to be in accordance with the laws of this state, he shall attach thereto his certificate to that effect, whereupon all such documents shall be deposited with the Board. Upon receipt by the Board of such documents so certified by the Attorney General, the Board shall record the same in a book kept for that purpose; and upon receipt of a fee of One Dollar (\$1.00), it shall furnish a certified copy of the same to the incorporators, upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt bylaws for the government of the company, and elect a board of directors of not less than five (5) members; which board shall have full control and management of the affairs of the corporation, subject to the bylaws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The board of directors so elected shall serve until the fourth Tuesday in April thereafter, on which date, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year; provided, however, that when the board of directors shall consist of nine (9) or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of stockholders after their election, that of the second class to expire at the second annual meeting after their election,

and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of stockholders. Annual meetings of the stockholders, after the first meeting, shall be held at the home office of the company on or before April 30 of each year as may be prescribed in the bylaws of the corporation. If the stockholders fail to elect directors at any annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. Neither directors nor officers need be stockholders unless the articles of incorporation or bylaws so require. The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be a director except as required by the bylaws of such company. The duties and compensation of officers of such company shall be in accordance with the bylaws of the company, or, to the extent of the absence of provisions governing the same in the bylaws, then the duties and compensation of officers shall be defined and fixed by the directors. The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of such business. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, except to the extent that the voting rights of the shares of any class or classes of stock are increased, limited or denied by the articles of incorporation as authorized or permitted by the Texas Business Corporation Act, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 6; Acts 1957, 55th Leg., p. 261, ch. 122, § 1; Acts 1959, 56th Leg., p. 937, ch. 433, § 1; Acts 1965, 59th Leg., p. 16, ch. 8, § 1, eff. Feb. 25, 1965.]

#### Art. 3.05. Amendment of Charter

(a) At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or

reduce the amount of its capital stock. The capital stock shall in no case be reduced to less than the minimum amount of fully paid up capital stock required by applicable provisions of law. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

(b) Any legal reserve life insurance company may purchase in the name of such company, issued and outstanding shares of the capital stock of such company in accordance with the provisions of the Texas Business Corporation Act. Purchases of stock under this paragraph shall not be deemed an investment nor shall such purchases be held in violation of the provisions of the Texas Insurance Code governing eligible investments for such company. Any such company, immediately or within ten days after such purchase, shall file a statement with the Commissioner of Insurance, which statement shall set forth the name of the shareholder or shareholders from whom such shares have been purchased and the sum of money paid for such shares.

[Acts 1951, 52nd Leg., ch. 491; Acts 1967, 60th Leg., p. 720, ch. 301, § 1, eff. Aug. 28, 1967.]

#### Art. 3.06. Original Examination and Certificate

When the first meeting of the stockholders shall be held and the officers of the company elected, the president or secretary shall notify the Board of Insurance Commissioners; and it shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If it finds that all of the capital of the company, as required by law, has been fully paid up and that the capital and surplus is in the custody of the officers, in cash or securities of the class authorized by Article 3.02 of the Insurance Code as amended, it shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter; which certificate shall be issued for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law. Before such certificate is issued, not less than two (2) officers of such company shall execute and file with the Board of Insurance Commissioners a sworn schedule of all

the assets of the company exhibited to the Board upon such examination showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company, and are worth the amount stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 7.]

*[Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.]*

#### Art. 3.07. Shall File Annual Statement

Each "domestic" company shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the Board of Insurance Commissioners, a statement, accompanied with the fee for filing annual statements of Twenty (\$20.00) Dollars, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies in force on that date in Texas, and the total amount of its policies in force.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 3.08. Renewal Certificates

Whenever any such company, transacting insurance business in this State, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this State in accordance with the provisions of this chapter, the Board of Insurance Commissioners shall, upon a receipt of a fee of One (\$1.00) Dollar, issue a renewal certificate of authority to such company for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law.

[Acts 1951, 52nd Leg., ch. 491.]

*[Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.]*

#### Art. 3.09. Copy of Certificates for Agents

Any such company organized under the laws of this State, having received authority from the Board of Insurance Commissioners to transact business in this State, shall receive from such Board, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this State.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.10. May Reinsure**

Any domestic company may reinsure in any insurance company licensed to transact business in any state or district of the United States, any risk or part of a risk which it may assume; provided, however, no credit for the reserve liability on such reinsurance may be taken by the ceding company unless the assuming insurer is licensed to do business in this state and, provided further, no company operating under Section 2(a) of Article 3.02 shall reinsure any risk or part of a risk with any insurer which is not licensed to do business in this state. No such company shall have the power to reinsure its entire outstanding business unless the assuming insurer is licensed in this state and until the contract therefor shall be submitted to the Commissioner of Insurance of Texas and approved by him as protecting fully the interests of all policyholders. [Acts 1951, 52nd Leg., ch. 401; Acts 1961, 57th Leg., p. 447, ch. 220, § 1.]

**Art. 3.11. Dividends; How Paid**

No life insurance company shall declare or pay any dividends to its policyholders, except from the expense loading and profits made by such company; provided, however, any such company not showing a profit may pay dividends on its participating policies from the expense loading on such policies; and provided further, that any payment of dividends from the expense loading shall not be discriminatory as between policyholders. This shall not prohibit the issuance of policies guaranteeing, by coupons or otherwise, definite payments or reductions in premiums, but any such guarantee contained in policies or coupons issued after the effective date of this Act shall be treated as a definite contract benefit and so valued according to the reserve requirements of this Chapter using in the case of policies or coupons issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law) reserve valuation net premium for such benefits which is a uniform percentage of the gross premium, provided that any policy containing such a contract benefit may be valued on a basis which provides for not more than one (1) year preliminary term insurance, and using in the case of policies or coupons issued on or after the operative date of Article 3.44a the commissioners reserve valuation method as defined in Article 3.28. No such company shall declare or pay any dividends to its stockholders, except from the earned surplus of said company, as defined in, and in the manner authorized or provided by the Texas Business Corporation Act. Nothing in this Section with respect to reserves shall apply to any policy issued prior to September 7, 1955.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 8; Acts 1963, 58th Leg., p. 1117, ch. 434, § 1; Acts 1963, 58th Leg., p. 1362, ch. 518, § 1.]

Acts 1963, 58th Leg., p. 1362, ch. 518, § 2 provided: "All laws or parts of laws relating to stockholder dividends of life insurance companies organized under Chapter 3 of the Insurance Code which are in conflict with this Act are expressly repealed to the extent of the conflict only; and this Act shall prevail over any conflicting provisions or laws."

**Art. 3.12. Compensation of Officers and Others; Including Pensions**

(a) No "domestic" company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than Twenty Thousand Dollars (\$20,000) to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any "domestic" company from entering into contracts with its agents for the payment of renewal commissions.

(b) The stockholders of any such "domestic" company may authorize the inauguration of a plan or plans for the payment of pensions, retirement benefits or group insurance to its officers and employees. The stockholders may delegate to the board of directors authority and responsibility for the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans or any amendments thereof.

(c) Mutual companies, acting through their policyholders, may exercise the same discretion and shall have the same authority, privileges and rights as are conferred upon "domestic" companies under Subparagraph (b) next above.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 1330, ch. 451, § 1; Acts 1971, 62nd Leg., p. 2857, ch. 936, § 1, eff. June 15, 1971.]

Section 2 of the 1971 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 3.13. Disbursement by Vouchers**

No "domestic" company shall make any disbursement of One Hundred (\$100.00) Dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure, and stating the reason for not obtaining such voucher.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.14. To Deposit Funds in Name of Company**

Any director, member of a committee, or officer, or any clerk of a "domestic" company, who is

charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 3.15. Deposit of Securities in Amount of Capital Stock

(a) Any "domestic" company may, at its option, deposit with the Treasurer of this State, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this State permits such insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Board of Insurance Commissioners. When any such deposit is made, the Treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the Treasurer's receipt on the policies it may issue; and the proper officer or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer and the Board of Insurance Commissioners. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policyholders in this State. For the purpose of state, county and municipal taxation, the situs of securities deposited with the treasurer by domestic insurance companies shall be in the city and county where the principal business office of such company is fixed by its charter.

(b) When two or more companies merge or consolidate or enter a total reinsurance contract by which the ceding company is dissolved and its assets acquired and liabilities assumed by the surviving company, and the companies have on deposit with the State Treasurer two or more deposits made under Article 3.15 of the Texas Insurance Code, as amended, all such deposits, except the deposit of greatest amount and value may be withdrawn by the new, surviving or reinsuring company upon proper showing before the Commissioner that the company is the owner thereof. The Treasurer of the State of Texas

shall release, transfer and deliver such deposit or deposits to the owner as directed by order of the Commissioner.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 812, ch. 344, § 1; Acts 1967, 60th Leg., p. 1827, ch. 705, § 4, eff. Aug. 28, 1967.]

#### Art. 3.16. Deposits of Securities in Amount of Legal Reserve

Sec. 1. Any life insurance company now or which may hereafter be incorporated under the laws of this State may deposit with the State Board of Insurance for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this State, it is permitted to invest or loan its capital, surplus and/or reserves, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said State Board of Insurance in trust for the purpose and objects herein specified. The physical delivery of such securities to the State Board of Insurance shall be sufficient without being accompanied by a written transfer of any lien securing them. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said State Board of Insurance in trust the real estate in which any portion of its said reserve may be lawfully invested. In such case, the State Board of Insurance shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with it, whereupon it shall reconvey the same to such company. Said State Board of Insurance may cause any such securities or real estate to be appraised and valued prior to their being deposited with or conveyed to it, in trust as aforesaid; the reasonable expense of such appraisal or valuation to be paid by the company. Under the provisions of this Article, registered as well as unregistered United States Government securities may be deposited.

Sec. 2. Notwithstanding the provisions of Section 1, of this Article, no new deposit of securities will be lawful after the effective date of this Section, except to the extent expressly required by Article 3.17.

Sec. 3. For the purpose of state, county, and municipal taxation the situs of securities deposited with the State Board of Insurance shall be in the city and county where the principal business office of such company is fixed by its charter.

[Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 812, ch. 344, § 2; Acts 1961, 57th Leg., p. 1053, ch. 469, § 1.]

#### Art. 3.17. What Deposits May Include

Sec. 1. Any life insurance company which has heretofore issued or assumed the obligations of policies or annuity bonds which have been registered in the manner at any time authorized by this Chapter, shall at all times hereafter have on deposit with the State Board of Insurance securities of the character

described in Article 3.16 in amounts equal to or in excess of the aggregate net value of such outstanding registered policies and annuity bonds in force, and for such purpose new and additional deposits of securities shall be made from time to time and in amounts of not less than Five Thousand Dollars (\$5,000). Any such company whose deposits exceed such aggregate net value of its outstanding registered policies and annuity bonds in force may from time to time withdraw such excess by withdrawals of not less than Five Thousand Dollars (\$5,000). Any such company may at any time withdraw any of its deposited securities by depositing in their stead others of equal value and of the character authorized by this Chapter, and may collect the interest, rents and other income from its securities on deposit. The net value of every policy or annuity bond subject to this Act shall be its value according to the standard prescribed by the laws of this State, when the first premium thereon has been paid, less the amount of such liens as the company may have against it not in excess of such value.

Sec. 2. The securities of any such company on deposit with the State Board of Insurance shall be held in trust by said board for the benefit of all of the holders of the outstanding policies and annuity bonds of such company which have been registered pursuant to this Chapter.

Sec. 3. No company which has outstanding registered policies or annuity bonds in force shall reinsure its outstanding registered business, or the whole of any one or more of its registered policies or annuity bonds, except in a company or companies incorporated and organized under the laws of this State or having permission to do business in this State. [Acts 1951, 52nd Leg., ch. 491; Acts 1961, 57th Leg., p. 1053, ch. 469, § 2.]

#### Art. 3.18. Effect and Value of Deposits in Amount of Legal Reserve

Sec. 1. After the effective date of this Section 1, of this Article, no policy or annuity bond shall be registered in the manner heretofore authorized by this Chapter.

Sec. 2. Every life insurance company which is required by this Chapter to have securities on deposit with the State Board of Insurance shall keep records of all of its outstanding registered policies and annuity bonds in force, and of the net value thereof.

Sec. 3. Each life insurance company which is required by this Chapter to have securities on deposit with the State Board of Insurance shall, within fifteen (15) days after the termination of each calendar month, file with said Board a report stating whether or not the value of its securities on deposit is equal to or in excess of the aggregate value of its registered policies and annuity bonds outstanding and in force at the end of such preceding calendar month.

Sec. 4. The securities deposited under this Chapter by each company shall be placed and kept by the State Board of Insurance in some secure safe-deposit, fireproof box or vault in the city or town in or near where the home office of the company is located. The officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the State Board of Insurance may establish.

[Acts 1951, 52nd Leg., ch. 491; Acts 1961, 57th Leg., p. 1053, ch. 469, § 3.]

#### Art. 3.19. Repealed by Acts 1961, 57th Leg., p. 1053, ch. 469, § 4

The repealed article related to fees for making deposits and was derived from Acts 1951, 52nd Leg., ch. 491, which, in turn, was based on art. 4742, R.S.1925 (Acts 2nd C.S.1909, p. 450, § 3; R.S.1911, art. 4752), as amended by Acts 1941, 47th Leg., p. 486, ch. 304, § 1.

### SUBCHAPTER B. FOREIGN COMPANIES

#### Art. 3.20. Statement to be Filed

Any life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State, shall furnish said Board of Insurance Commissioners with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company which statement shall show:

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.
4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.
5. Amount of liabilities of the company, stating the name of the person or corporation to whom liable.
6. Losses adjusted and due.
7. Losses adjusted and not due.
8. Losses adjusted.
9. Losses in suspense and for what cause.
10. All other claims against the company, describing the same.

The Board of Insurance Commissioners may require any additional facts to be shown by such annual statement. Each such company shall be re-

quired to file a similar statement not later than March 1 of each year.  
[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.21. Articles of Incorporation to be Filed**

Any such foreign insurance company shall accompany the statement required in the foregoing article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company.  
[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.22. Capital Stock and Surplus Requirements**

No such foreign stock insurance company shall be licensed by the Board of Insurance Commissioners or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum capital and surplus required by this chapter of a similar domestic company in similar circumstances, including the same character of investments for its minimum capital and surplus. No such foreign mutual insurance company shall be licensed by the Board of Insurance Commissioners or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum free surplus required by Chapter 11 of this Code of a similar domestic company in similar circumstances including the same character of investments for its minimum free surplus.  
[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 9.]

**Art. 3.23. Foreign Companies to Deposit**

No such foreign insurance company incorporated by or organized under the laws of any foreign government, shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policyholders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas to the amount of One Hundred Thousand (\$100,000.00) Dollars.  
[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.24. Deposit Liable for Judgment**

The deposit required by the preceding article shall be held liable to pay the judgments of policyholders in such company, and may be so decreed by the court adjudicating the same.  
[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.24-1. Certificate of Authority**

When a foreign or alien company has complied with the requirements of this Subchapter and all other requirements imposed on such company by law and has paid any deposit imposed by law, and the operational history of the company when reviewed in conjunction with its loss experience, the kinds and

nature of risks insured, the financial condition of the company and its ownership, its proposed method of operation, its affiliations, its investments, any contracts leading to contingent liability or agreements in respect to guaranty and surety, other than insurance, and the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid and required policy reserve increases, indicates a condition such that the expanded operation of the company in this State or its operations outside this State will not create a condition which might be hazardous to its policyholders, creditors or the general public, the Commissioner shall file in the office the documents delivered to him and shall issue to the company a certificate of authority to transact in this State the kind or kinds of business specified therein. Such certificate shall continue in full force and effect upon the condition that the company shall continue to comply with the laws of this State.

[Acts 1973, 63rd Leg., p. 1384, ch. 533, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 Act added article 3.55-1; § 3 thereof provided: "If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable."

**Art. 3.25. Law Deemed Accepted**

Each life insurance company not organized under the laws of this State, hereafter granted a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this State under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this State, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this State, as is or may be imposed by law on such companies transacting new business within this State, under certificates of authority during such year. The rate of such tax to be so paid by any such company shall never exceed the rate imposed by law upon insurance companies transacting business in this State. Each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority and shall at all times be subject to examination by the Board of Insurance Commissioners or some one selected by it for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined. The respective duties of the Board in certifying to the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes

due from companies authorized to transact new business within this State.

[Acts 1951, 52nd Leg., ch. 491.]

### Art. 3.26. When Foreign Companies Need Not Deposit

If the deposit required by Article 3.23 of this code has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., ch. 491.]

### Art. 3.27. Companies Desiring to Loan Money

Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so from the Secretary of State by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State.

[Acts 1951, 52nd Leg., ch. 491.]

## SUBCHAPTER C. RESERVES AND INVESTMENTS

### Art. 3.28. Standard Valuation Law

#### Title

Sec. 1. This Article shall be known as the Standard Valuation Law.

Valuation of Reserve Liabilities for Life Policies and Endowment Contracts

Sec. 2. The State Board of Insurance shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, except that in the case of an alien company, such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, the Board may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the Board may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the State Board of Insurance when such certificate states the valuation

to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Terms and Rules in Computing Reserve Liability on Policies and Contracts Issued Prior to Operative Date of Standard Non-forfeiture Law

Sec. 3. This Section shall apply only to those policies and contracts issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law). The reserve liability of all such policies and contracts shall be computed in accordance with their terms and the following rules:

(1) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience Table of Mortality and four and one-half per cent (4½%) interest per annum.

(2) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the computation shall be on the basis of the Actuaries or Combined Experience Table of Mortality with four per cent (4%) interest per annum, if the interest rate guaranteed in the policy is four per cent (4%) per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four per cent (4%) per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

(3) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (1) the specified rate of interest shall not exceed three and one-half per cent (3½%) per annum; (2) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, as respects policies issued after the 31st day of December, 1959, the Commissioners 1958 Standard Ordinary Mortality Table; and (3) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-Standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table, or, as respects policies issued after the 31st day of December, 1963, the Commissioners 1961 Standard Industrial Mortality Table.

(4) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under the preceding paragraph (3) and specified in the respective policies, but may at the option of the company be based

on an age not more than three (3) years younger than the actual age of the insured.

(5) Except as otherwise provided in Subsection (b) of Section 4 with respect to coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, as respects policies issued on substandard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

(6) The reserve values of all policies of group insurance issued prior to May 15, 1947, shall be computed upon the basis of the American Men Ultimate Table of Mortality with interest at the rate of three per cent (3%) or three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to May 15, 1947, and prior to January 1, 1961, shall be computed upon the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to January 1, 1961, shall be computed on the basis of an interest rate not exceeding three and one-half per cent (3½%) per annum and such mortality table as shall be adopted by the company with the approval of the State Board of Insurance.

Minimum Standard for Valuation of Policies and Contracts

Sec. 4. (a) This Section shall apply to only those policies and contracts issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), except as otherwise provided in Subsection (b) of this Section for coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts issued prior to such operative date. Except as otherwise provided in Subsection (b) of this Section, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in Section 5, three and one-half per cent (3½%) interest, or in the case of policies and contracts other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory Act of 1973 and prior to January 1, 1986, four per cent (4%) interest, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of Arti-

cle 3.44a (the Standard Non-forfeiture Law) as amended, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this Article may be calculated according to an age not more than three (3) years younger than the actual age of the insured.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Section 7 of Article 3.44a (the Standard Non-forfeiture Law) as amended, and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the State Board of Insurance.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the State Board of Insurance, or at the option of the Company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1974, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after the operative date of Article 3.44a, and prior to January 1, 1974, either such tables or, at the option of the company, the Class (3) Disability Table (1926), or such other basis as may be approved by the State Board of Insurance. Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1974, the 1959 Accidental Death Benefits Table; for policies issued on or after the operative date of Article 3.44a, and prior to January 1, 1974, either such table or, at the option of the Company, the Inter-Company Double Indemnity Mortality Table, or such oth-

er basis as may be approved by the State Board of Insurance. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the State Board of Insurance.

(b) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this Section 4(b), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, regardless of the issue date of such contracts, shall be the commissioners reserve valuation method defined in Section 5 and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(2) For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and three and one-half per cent (3½%) interest.

(3) For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(4) For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and three and one-half per cent (3½%) interest.

After the effective date of this amendatory Act of 1973, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for such company; provided, a company may elect a different operative

date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this Subsection (b) for such company shall be January 1, 1979.

Reserves for Life Insurance and Endowment Benefits of Policies Providing Uniform Amount of Insurance and Requiring Payment of Uniform Premiums

Sec. 5. Reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

Reserves according to the commissioners reserve valuation method for (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (2) annuity and pure endowment contracts, (3) disability and accidental death benefits in all policies and contracts, and (4) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of the preceding paragraph, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums. Such impairments and special hazards may also be disregarded in determining present value of benefits.

Aggregate Reserves for all Life Policies; Minimum Amount

Sec. 6. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of Article 3.44a (the Stand-

ard Non-forfeiture Law), be less than the aggregate reserves calculated in accordance with the method set forth in Section 5 and the mortality table or tables and rate or rates of interest used in calculating non-forfeiture benefits for such policies.

Calculation of Reserves for Policies and Contracts Issued Prior to Operative Date of Standard Non-forfeiture Law; Standards

Sec. 7. Reserves for all policies and contracts issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the State Board of Insurance, issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any non-forfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law) may, with the consent of the State Board of Insurance, be calculated according to a rate of interest lower than the rate of interest used in calculating the non-forfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the non-forfeiture benefits by more than one-half ( $\frac{1}{2}\%$ ) per cent the company issuing such policies shall file with the State Board of Insurance a plan providing for such equitable increases, if any, in the cash surrender values and non-forfeiture benefits in such policies as the State Board of Insurance shall approve.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the State Board of Insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

#### Deficiency Reserve

Sec. 8. If the gross premium charged by any life insurance company on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the

difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period. [Acts 1951, 52nd Leg., ch. 491; Acts 1959, 56th Leg., p. 960, ch. 448, § 1; Acts 1963, 58th Leg., p. 1117, ch. 434, § 2; Acts 1973, 63rd Leg., p. 1070, ch. 411, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1071, ch. 411, § 2, eff. June 14, 1973.]

Section 3 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 3.29. Extra Hazardous Policies

If any life insurance company doing business under the laws of this State has written or assumed risks that are sub-standard or extra hazardous and has charged therefor more than its published rates of premium, the Board of Insurance Commissioners shall in valuing such policies compute and charge such extra reserves thereon as is warranted by reason of the extra hazard assumed and the extra premium charged. If the Board of Insurance Commissioners shall find, after notice and hearing, that a particular risk or class of risks is sub-standard or extra hazardous, then and in that event no such company shall thereafter write or assume any such risks unless they charge therefor such extra premium as is warranted by reason of the extra hazard assumed.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 3.30. Repealed by Acts 1963, 58th Leg., p. 1117, ch. 434, § 3, eff. Aug. 23, 1963

The repealed article was derived from Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 10.

See, now, the Standard Valuation Law, art. 3.28.

#### Art. 3.31. Failure to File Certificate

If any such foreign insurance company shall fail to file the certificate authorized by the preceding article, it shall be required forthwith to file with the Board of Insurance Commissioners full detailed lists of its policies and securities and shall be liable for all charges and expenses consequent upon its failure so to file such certificate.

[Acts 1951, 52nd Leg., ch. 491.]

#### Art. 3.32. Requirement of Securities in Amount of Reserve

Having determined the required reserves on all the policies in force, the Board shall see that the company has in securities of the class and character required by the laws of this State the amount of said reserves on all its policies, after all the debts and claims against it and the minimum capital required by this chapter have been provided for.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 11.]

#### Art. 3.33. Repealed by Acts 1963, 58th Leg., p. 864, ch. 332, § 1, eff. Aug. 23, 1963

**Art. 3.34. Texas Securities**

The term "Texas Securities" as used in this Chapter, shall be held to include the following:

**PART I. INVESTMENTS.****1. U. S. Bonds and Obligations.**

That percentage of a life insurance company's investments in the bonds, treasury bills, notes and certificates of indebtedness of the United States and other obligations and securities fully guaranteed as to principal and interest by the full faith and credit of the United States (exclusive of obligations of the United States or any agency or instrumentality thereof specifically included for the full amount thereof under Paragraphs 6 and 7 of this Part I) that its Texas Reserves bear to its total reserves.

**2. State Bonds.**

Bonds of the State of Texas.

**3. County, City, School District and other Subdivision Bonds.**

Bonds and interest-bearing warrants issued by authority of law by any county, city, town, school district, or other municipality or subdivision of the State of Texas which is now or hereafter may be constituted or organized under the laws of this state, and is authorized to issue such bonds and warrants under the Constitution and laws of this state.

**4. Bonds of Educational Institutions.**

Bonds and interest-bearing warrants issued by authority of law by any educational institution of the State of Texas which is now or hereafter may be constituted or organized under the laws of this state, and is authorized to issue such bonds and warrants under the Constitution and laws of this state, provided legal provision has been made by a tax to meet said obligations.

**5. Special Obligations of Educational Institutions.**

Bonds and warrants, including revenue and special obligations, of any educational institution of the State of Texas when special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged, or otherwise provided by such educational institution.

**6. Bonds in Settlement of Insured or Guaranteed Loans.**

Bonds, debentures and other evidences of indebtedness of the United States or any agency or instrumentality thereof, or the State of Texas or any agency or instrumentality thereof, received and retained in whole or partial settlement of any insurance or guarantee in whole or in part by the United States or any agency or instrumentality thereof, or by the State of Texas or any agency or instrumentality thereof, of notes or bonds secured by mortgage or deed of trust upon real estate situated in this state.

**7. Federal Farm Loan Bonds.**

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,<sup>1</sup> where such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state.

**8. Corporate First Mortgage Bonds and Debentures.**

First mortgage bonds and first lien notes on real estate or personal property of any solvent corporation incorporated under the laws of this state and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; and the debentures of any such corporation incorporated under the laws of this state with a capital stock of not less than Five Million Dollars (\$5,000,000) where no prior lien exists, or, under the provisions of the indenture providing for the issuance of such debentures, can be created against the real or personal property owned by such corporation at the time the debentures were issued; but in no event shall the amount of such investment in the bonds or debentures of any such corporation exceed five per cent (5%) of the admitted assets of the insurance company making the investment.

**9. Securities of Electric or Gas Public Utility Corporations.**

Such debentures, preferred stock and common stock of any (a) solvent electric or gas public utility corporation, incorporated under the laws of and doing business in this state which derives at least eighty-five per cent (85%) of its gross income from the sale of electricity or gas; or (b) other corporation, incorporated under the laws of and doing business in this state, the principal assets of which are the common stock of subsidiaries which are solvent electric or gas public utility corporations from which it derives at least eighty-five per cent (85%) of its gross income, as are authorized investments under the provisions of Article 3.39 and 3.41 respectively, of the Insurance Code of this state, as amended.

**PART II. LOANS.****1. First Liens upon Real Estate.**

First lien notes or first mortgage bonds secured by real estate situated in this state, the title to which is valid and the value of which is

at least one-third ( $\frac{1}{3}$ ) more than the amount loaned thereon.

2. First Liens upon Leasehold Estates.

First lien notes or first mortgage bonds secured by leasehold estates in real property and improvements thereon situated in this state, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ( $\frac{4}{5}$ ) of the then unexpired term of such leasehold estate; provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal or principal and interest during a period not exceeding four-fifths ( $\frac{4}{5}$ ) of the then unexpired term of such leasehold estate.

3. Collateral Liens upon Real Estate.

Obligations secured collaterally by first mortgage liens or first deed of trust liens against any such first liens on real estate or leasehold estates situated in this state.

4. Insured or Guaranteed Liens upon Real Estate.

The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration and dignity of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, or by the State of Texas or by any agency or instrumentality of either of them, or if not wholly so insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, or by the State of Texas or by any agency or instrumentality of either of them would not exceed the amount of loan permissible under said restrictions.

5. Policy Loans.

Loans made to policyholders on the sole security of the reserve values of their policies.

6. Insurance Requirements.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the State of Texas for at least fifty per cent (50%) of the value thereof; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

7. Collateral Liens upon other Texas Securities.

Obligations collaterally secured by first mortgage liens or first deed of trust liens against any of the securities named or referred to in Part I or Part IV hereof as constituting investments in Texas Securities.

PART III. REAL ESTATE.

All real estate situated in this state now owned and held and all real estate situated in this state hereafter acquired, owned and held by such insurance company in accordance with the provisions of this Chapter to the extent of its reasonable market value.

PART IV. MISCELLANEOUS.

1. Bank Deposits.

The cash deposits in regularly established national or state banks or trust companies in this state on the basis of average monthly balances throughout the calendar year.

2. Texas Securities under Special Acts.

The securities, insured accounts and evidences of indebtedness which are defined as "Texas Securities" under Article 842a and 881a-24 of the Revised Civil Statutes of Texas.

3. Other Texas Securities Specifically Defined by Law.

Such other securities, loans and investments as are now or may hereafter be specifically defined by law as "Texas Securities" for purposes of this Chapter.

[Acts 1951, 52nd Leg., ch. 491; Acts 1953, 53rd Leg., p. 403, ch. 115, § 1; Acts 1959, 56th Leg., p. 96, ch. 49, § 2; Acts 1959, 56th Leg., p. 626, ch. 282, § 1; Acts 1961, 57th Leg., p. 933, ch. 411, § 1.]

<sup>1</sup> 12 U.S.C.A. § 641 et seq.

**Art. 3.35. Repealed by Acts 1963, 58th Leg., p. 864, ch. 332, § 1, eff. Aug. 23, 1963**

**Art. 3.36. Report of Reserves and Investments Required**

Each life insurance company doing business in this State shall, not later than ten days after January 31 of each year, file with the Board of Insurance Commissioners on a blank prepared and furnished by it for that purpose, a report showing the entire amount of the reserve on its entire business in force in this State on December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or vice president and the secretary of such company. Such report shall contain such other information as may be required by the Board to determine whether or not such company has continuously and in good faith complied with this law; and for that purpose the Board may, whenever it shall deem it proper, require such special or supplementary reports as it may deem necessary.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.37. Repealed by Acts 1963, 58th Leg., p. 864, ch. 332, § 1, eff. Aug. 23, 1963**

**Art. 3.38. Not to Apply to Fraternal Societies**

Nothing in this chapter shall be held to apply to fraternal benefit societies as defined by the laws of this State.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.39. Authorized Investments and Loans for "Domestic" Life Insurance Companies****PART I. AUTHORIZED INVESTMENTS**

A life insurance company organized under the laws of this state may invest its several funds, identified as follows, in the following securities, respectively, and none other:

**A. ANY OF ITS FUNDS AND ACCUMULATIONS****1. U. S. Bonds and Obligations Guaranteed by the United States.**

The bonds, treasury bills, notes and certificates of indebtedness of the United States or any other obligation or security fully guaranteed as to principal and interest by the full faith and credit of the United States.

**2. Canadian Bonds.**

The bonds of the Dominion of Canada or any province or city of the Dominion of Canada.

**3. State, County and City Bonds.**

The bonds of any state, county, or city of the United States.

**4. County, -City and School District Bonds.**

Any bonds or interest-bearing warrants issued by authority of law by any county, city, town, school district or other municipality or subdivision, which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

**5. Bonds of Educational Institutions.**

Any bonds or interest-bearing warrants issued by authority of law by any educational institution which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

**6. Revenue Bonds, etc., of Educational Institutions.**

The bonds and warrants, including revenue and special obligations, of any educational institution located in any state in the United States when special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such educational institution.

**7. Bonds and Warrants of Municipally Owned Systems.**

The bonds and warrants payable from designated revenues of any city, county, drainage district, road district, town, township, village or other civil administration, agency, authority, instrumentality, or subdivision which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality.

**8. Paving Certificates.**

Any paving certificates or other certificates or evidence of indebtedness issued by any city in any state in the United States and secured by a first lien on real estate.

**9. Bonds issued under Federal Farm Loan Act.**

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916 (12 U.S.C.A. Sec. 641 et seq.), when such bonds are issued against and secured by promissory notes, or obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unincumbered real estate situated in this state.

**10. Corporate First Mortgage Bonds, Notes and Debentures.**

(1) First mortgage bonds or first lien notes on real estate or personal property: (a) of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (b) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (c) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or (d) of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has

assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or (2) in the notes or debentures of any such corporation with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 per cent of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 per cent of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or (3) in the notes or debentures of any solvent corporation which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes, or whose notes or debentures are fully guaranteed by any such corporation, but in no event shall the amount of such investment in the bonds, notes, or debentures of any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making such investment.

#### 11. Shares of Savings and Loan Associations.

The shares, stock, share accounts or savings accounts, and investment certificates of Savings and Loan Associations doing business in this state where such association has qualified for participation in insurance issued by the Federal Savings and Loan Insurance Corporation; no such investment shall exceed twenty per cent (20%) of the total assets of any such Individual Savings and Loan Association.

#### 12. Bank and Bank Holding Company Stocks.

The stock of banks, either state or national, that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. 1841 et seq.) as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. 1841 et seq., 1971 et seq.) enacted by the United States Congress; no such investment shall exceed twenty per cent (20%) of the total outstanding shares of

the stock of any such bank or bank holding company and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

#### 13. Debentures of Public Utility Corporations.

The debentures of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on its outstanding indebtedness equal at least to three times the amount of interest due for that year, or where, in the case of issuance of new debentures, such earnings applicable to interest are equal to at least three times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on the outstanding indebtedness equal to at least three times the amount of interest due for that year, to where in the case of issuance of new debentures such earnings applicable to interest are equal to at least three times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; but in no event shall the amount of such investment in debentures under this Subdivision exceed five per cent (5%) of the admitted assets of the insurance company making the investment.

#### 14. Preferred Stock of Public Utility Corporations.

The preferred stock of any solvent public utility corporation which has not defaulted in

the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which public utility corporation and the public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment, but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to the dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock, such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; provided that any preferred stock so purchased shall be of an issue which is entitled to first claim upon the net earnings of such public utility corporation after deducting such sum as may be necessary to service any outstanding bonds and debentures, but in no event shall the amount of such investment in preferred stock under this Subdivision exceed two and one-half per cent (2½%) of the admitted assets of the insurance company making the investment.

#### 15. Securities Not Otherwise Specified.

Notwithstanding any expressed or implied prohibitions, a life insurance company may, after the effective date of this amendment, invest any of its funds and accumulations in investments which do not otherwise qualify under any other provision of Chapter 3 of the Insurance Code; provided, however, that the amount of any one such investment under this Section shall not exceed one per cent (1%) of the admitted

assets of any such life insurance company; and provided further, that the investments authorized by this Section shall not exceed the lesser of (a) five per cent (5%) of its admitted assets, or (b) the amount of its capital and surplus in excess of Two Hundred Thousand Dollars (\$200,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the State Board of Insurance.

Nothing herein shall be construed or applied so as to authorize any life insurance company to invest any of its funds or accumulations in real property unless already authorized to do so by this Act or some other existing law of the State of Texas.

#### 15A. Other Bonds.

A company may also invest its funds and accumulations in:

- (1) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank; and
- (2) bonds issued, assumed, or guaranteed by the State of Israel.

#### 16. Securities Authorized by Special Acts of the Legislature.

Securities authorized under Articles: 842a; 842a-1; 881a-24; 1187a; 5890c; 6795b-1; 7880-19a; 8247a; 8280-133; 8280-134; 8280-137; 8280-138; and 8280-139 of the Revised Civil Statutes of Texas.

#### 17. Other Securities Specifically Authorized by Law.

Such other securities as are now or may hereafter be specifically authorized by law.

#### B. POLICY RESERVES AND SURPLUS

##### 1. Specified Municipal Bonds.

It may invest its policy reserves and surplus over and above its capital in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature.

#### C. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

It may invest its capital, surplus and contingency funds over and above the amount of its policy reserves in the following securities:

##### 1. Capital Stock, Bonds, and other Obligations of Corporations.

The capital stock, bonds, bills of exchange, or other commercial notes or bills and securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation

has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment.

2. Bonds or Notes of Educational or Religious Corporations.

The bonds or notes of any educational or religious corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent.

3. Limitation of Investments.

It may not invest in its own capital stock nor in the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingent funds, nor in the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor in the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); provided, however, that it may own and invest not more than twenty-five per cent (25%) of its capital, surplus and contingency funds in the capital stock of one fire and casualty insurance company, provided such investment gives it a majority of the outstanding stock of such fire and casualty insurance company; and provided further, it may additionally invest that portion of its surplus funds which is in excess of the greater amount of either (a) ten per cent (10%) of its admitted assets as determined from its latest annual statement on file with the State Board of Insurance or (b) the minimum capital and surplus requirements for incorporating a life insurance company under Chapter 3 of the Insurance Code, as amended, as it may be amended, in the capital stock, bonds and other obligations of any one or more solvent corporations.

4. Certain Life Income Interests.

(a) Life income interest in an irrevocable express testamentary trust that has as the fee simple recipient of all the corpus of the trust one or more Texas public charities, Texas churches, Texas educational institutions or Texas scientific institutions; provided each recipient is recognized by the Internal Revenue Service of the United States as exempt from payment of income taxes and provided further that (1) the corpus of any such trust is in whole or in part composed of interests in real estate, stocks,

bonds, debentures and other securities of an aggregate total value of not less than \$5,000,000; and (2) the corpus of any such trust produces annual income of not less than \$100,000.

(b) No life insurance company's interest in any such trust shall exceed ten per cent (10%) of its admitted assets.

(c) Before such interest shall be acquired, satisfactory evidence shall be presented to the Commissioner of Insurance as follows:

(1) That the interest is subject to and recognized as transferable,

(2) That the interest is capable of reasonable valuation,

(3) That a market for sale of such interest exists,

(4) That the life income interest is supported by life insurance in an amount not less than its admitted value and in form approved by the Commissioner of Insurance.

(d) In valuing such interest on its books, the life insurance company shall value the interest only on the basis of the lesser of, (1) the recognized market established in accordance with Section (c)(3) above, or (2) the ratio that such fractional life income interest in the income of the trust bears to the total market value of the properties held by the trust that are of the type of property a life insurance company can lawfully acquire under the investment statutes of the State of Texas.

D. CAPITAL, SURPLUS AND CONTINGENCY FUNDS NOT TO EXCEED 10%

1. Capital Stock of Other Insurance Corporations.

It may invest not to exceed ten per cent (10%) of its capital, surplus, and contingency funds, in not more than twenty per cent (20%) of the capital stock of any other insurance company, now or hereafter organized under this Chapter, whose principal business is the reinsurance, either partially or wholly, of risks ceded to it by other life insurance companies. The investment herein authorized may be made by purchase of stock then issued and outstanding or by subscription to and payment for the increase in the capital stock of such reinsurance corporation.

E. MINIMUM CAPITAL AND SURPLUS

1. Requirement as to Investment of Minimum Capital and Surplus.

Notwithstanding other provisions of this Article 3.39 of this Code, the capital and surplus of a company hereafter organized under Article 3.02 of this Code and the free surplus of a company hereafter organized under Article 11.01 of this Code shall, at the time of incorporation, consist

only of lawful money of the United States, or bonds of the United States, or of this state, or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this Chapter, and shall not include any real estate; provided, however, that fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans; and the minimum capital of a company hereafter organized under said Article 3.02 and the minimum free surplus of a company hereafter organized under said Article 11.01 at all times shall be maintained in cash or in the same classes of investments. After the granting of charter the surplus in excess of such One Hundred Thousand Dollars (\$100,000) may be invested as otherwise provided in this Code for Stock Companies.

#### F. GENERAL

##### 1. Investment in Foreign Securities.

Any such company legally authorized to transact business in a foreign country may invest in the same kind of securities of said country as hereinbefore authorized in the United States of America for an aggregate amount not exceeding the reserve on the business in force in said country.

##### 2. Investments to be Approved by Board of Directors.

No investment shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments.

##### 3. Investments of Companies Reinsured.

In any case in which a life insurance company organized under the laws of this state shall reinsure the business and take over the assets of another life insurance company, either domestic or foreign, all investments of such reinsured company that were authorized, when made, by the laws of the state in which it was organized, as proper securities for investment of the funds of a life insurance company, and which are taken over by such reinsuring company, shall be considered as valid securities of such reinsuring company under the laws of this state, provided such investments are approved by the Board of Insurance Commissioners of this state, and the same are taken over on terms satisfactory to said Board; and upon the condition that the Board of Insurance Commissioners shall have the power to require the reinsuring company to dispose of such investments upon such notice as it may deem reasonable.

##### 4. Not to Invest in Stock Subject to Assessment.

No such insurance company shall invest any of its funds in any stock on account of which the holder or owner thereof may in any event be or

become liable to any assessment except for taxes.

##### 5. Certain Investment Privileges are Cumulative.

The investment powers conferred by Paragraphs Nos. 11 and 12, Section A, are in addition to those conferred by Paragraphs Nos. 1, 2 and 3, Section C, and are not to be construed as restricting the powers already granted by said Paragraphs Nos. 1, 2 and 3 of Section C and Paragraphs Nos. 11 and 12, Section A, and the powers conferred herein are cumulative with respect to Paragraphs Nos. 1, 2 and 3, Section C, and the powers conferred therein.

## PART II. AUTHORIZED LOANS

A life insurance company organized under the laws of this state may loan its several funds identified as follows, taking as collateral security for the payment of such loans the securities named below, and none other.

### A. ANY OF ITS FUNDS AND ACCUMULATIONS

Such company may loan any of its funds and accumulations on the following securities:

#### 1. First Liens Upon Real Estate.

First liens upon real estate, the title to which is valid and the value of which is at least one-third more than the amount loaned thereon.

#### 2. First Liens Upon Leasehold Estates.

First liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ( $\frac{4}{5}$ ) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal and interest during a period not exceeding four-fifths ( $\frac{4}{5}$ ) of the then unexpired term of such leasehold estate.

#### 3. Collateral Securities.

Upon any obligation secured collaterally by any such first liens on real estate or leasehold estates.

#### 4. Policy Loans.

Security of its own policies. No loan on any policy shall exceed the reserve values thereof.

#### 5. Other Securities.

It may loan any of its funds and accumulations, taking as collateral to secure the payment of such loan, any of the securities named or referred to in Part I of this Article 3.39 above in which it may invest any of its funds and accumulations.

6. Restrictions as to Value of Real Estate Removed Where Loans Insured by the United States.

The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C.A. Sec. 1701 et seq.), or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended, or by the State of Texas, would not exceed the amount of loan permissible under said restrictions.

7. Loans to be Authorized by Board of Directors.

No loan, except policy loans, shall be made by any such insurance company unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such loans.

8. Insurance Requirements.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the state in which such real estate is located, or in a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, which insurance shall be in an amount of at least fifty per cent (50%) of the value of such buildings; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

#### B. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

1. Capital Stock, Bonds, and Other Obligations of Solvent Corporations, and Educational or Religious Corporations.

It may loan its capital, surplus, and contingency funds, or any part thereof over and above the amount of its policy reserves, taking as security therefor the capital stock, bonds, bills of exchange, or other commercial notes or bills and the securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corporation which

has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the bonds or notes of any Educational or Religious Corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent; provided, the market value of such stock, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that it shall not take as collateral security for any loan its own capital stock, nor shall it take as collateral security for any loan the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingency funds, nor shall it take as collateral security for any loan the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); and provided further, that it shall not take as collateral security for any such loan any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

#### PART III. SEPARATE ACCOUNTS

Any domestic life insurance company may establish one or more separate accounts, and may allocate to such separate account or accounts, in accordance with the terms of a written agreement, any amounts paid to the company in connection with a pension, retirement or profit sharing plan which are to be applied to provide benefits payable in fixed or variable dollar amounts, subject to the following conditions and limitations:

(a) The amounts allocated to each such account and accumulations thereon may be invested and reinvested in any class of investments which may be authorized in the written agreement without regard to any requirements or limitations prescribed by this Chapter Three of the Insurance Code or by any other laws of this state governing the investments of domestic life insurance companies; provided, that to the extent that the company's reserve liability with regard to (1) benefits guaranteed as to amount and duration, and (2) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least

equal to such reserve liability shall be invested in accordance with the laws of this state governing the investments of domestic life insurance companies. The investments in such separate accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

(b) The income, if any, and gains and losses, realized or unrealized on each account shall be credited to or charged against the amounts allocated to the account in accordance with the written agreement, without regard to other income, gains or losses of the company.

(c) Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, than in accordance with the terms of the applicable written agreement; provided, that the portion of the assets of such separate account at least equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (a) hereof, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

(d) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company and the company shall not be, or hold itself out to be, a trustee with respect to such amounts.

(e) No investment shall be transferred between separate accounts or between separate and other accounts, unless the State Board of Insurance shall authorize such transfer in circumstances where such transfer would not be inequitable.

(f) If the agreement provides for payment of benefits in variable amounts, any contract delivered, issued or used in this state providing for such variable benefits shall be a group annuity contract. Such contract shall:

(1) Contain an undertaking by the insurance company to provide, to the extent of the interest in such separate account of the employer and of the covered employees, for the future issue of annuities payable to covered employees on or after their retirement, whether such annuities are payable only in variable dollar amounts or in both variable and fixed dollar amounts; and

(2) Be made in connection with a plan (other than one covering employees some or all of whom are employees within the meaning of Section 401(c)(1), as it now exists or may hereafter be amended, of the Internal Revenue Code) which meets the requirements for qualifications under Section 401, as it now exists or may hereafter be amended, of the Internal Revenue Code or the requirements for deduction of the employers' contributions under Section 404(a)(2), as it now exists or may hereafter

be amended, of said Code whether or not the employer deducts the amount paid for the contract under such section; and

(3) Prohibit the allocation to the separate account of any payment or contribution made by the employee; and

(4) Cover at least twenty-five employees at the time of its execution; and

(5) Contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits; and

(6) State that such dollar amount may decrease or increase, and contain on its first page, in a prominent position, a statement that the benefits thereunder are on a variable basis, and this requirement shall apply also to any certificate issued under any such contract.

(g) No domestic life insurance company, and no foreign life insurance company admitted to transact business in this state, shall be authorized to deliver, issue or use within this state any group annuity contract providing benefits in variable amounts until said company has satisfied the State Board of Insurance that its condition or methods of operation in connection with the issuance of such contracts will not be such as would render its operation hazardous to the public or its policyholders in this state. In determining the qualification of a company requesting authority to deliver such contracts within this state, the State Board of Insurance shall consider, among other things,

(1) The history and financial condition of the company;

(2) The character, responsibility and general fitness of the officers and directors of the company; and

(3) In the case of a foreign company whether the regulation provided by the state, province or country of its domicile provides a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.

(h) Nothing contained in this Part III of Article 3.39 of the Insurance Code shall be deemed to authorize the delivery, issue or use in this state of any annuity contract providing benefits in variable amounts other than the group annuity contracts meeting the requirements of paragraph (f) of this Part III of Article 3.39, and the reserve liability for such group annuity contracts shall be established by the State Board of Insurance pursuant to the requirements of the Standard Valuation Law in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

(i) Notwithstanding any other provision of law, the State Board of Insurance shall have sole authority to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this Part III of Article 3.39 of the Insurance Code.

(j) Nothing herein shall be construed or applied so as to authorize any life insurance company to invest any of its funds or accumulations in real property unless authorized to do so by this Act or some other existing law of the State of Texas.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 12; Acts 1959, 56th Leg., p. 54, ch. 29, § 1; Acts 1959, 56th Leg., p. 96, ch. 49, § 3; Acts 1959, 56th Leg., p. 626, ch. 282, § 1; Acts 1959, 56th Leg., p. 890, ch. 411, §§ 1 to 3; Acts 1961, 57th Leg., p. 925, ch. 410, § 1; Acts 1963, 58th Leg., p. 432, ch. 151, § 1; Acts 1963, 58th Leg., p. 967, ch. 389, § 1; Acts 1965, 59th Leg., p. 375, ch. 181, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 497, ch. 257, §§ 1 to 10, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 1829, ch. 707, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2132, ch. 736, § 1, eff. June 12, 1969; Acts 1969, 61st Leg., p. 229, ch. 91, § 1, eff. April 5, 1969; Acts 1971, 62nd Leg., p. 1561, ch. 422, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1668, ch. 472, § 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1739, ch. 631, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 398, ch. 176, § 1, eff. May 25, 1973.]

#### Saved from Repeal

*Article 3.72, enacted by Acts 1967, 60th Leg., p. 461, ch. 210, § 1, authorizing the issuance of variable annuity contracts, provides in section 16 that nothing in the article shall be deemed to repeal or affect the provisions of Part III of article 3.39, dealing with group variable annuity contracts, or to affect such contracts.*

Acts 1967, 60th Leg., p. 1829, ch. 707, § 2 amended Civil Statutes, art. 2669; sections 3 and 4 thereof amended Civil Statutes, art. 2591a conditioned on the adoption of amendment to Const. art. 7, § 11a proposed by Acts 1967, 60th Leg., H.J.R. No. 20, p. 2987.

Sections 2 and 3 of Acts 1971, 62nd Leg., p. 1561, ch. 422, provided: "Sec. 2. If any provision, section, sentence, clause or part of this Act or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws or parts of laws which are in conflict with this Act are hereby repealed or modified to the extent of such conflict only."

#### Art. 3.39a. Life Insurance Company Prohibited from Subscribing to or Underwriting Purchase or Sale of Securities or Property

No life insurance company organized under the laws of this state shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation, nor shall any such company enter into any agreement to withhold from sale any of its property, but

the disposition of its property shall be at all times within the control of its Board of Directors. [Acts 1961, 57th Leg., p. 925, ch. 410, § 2.]

#### Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1(a). One building site and office building for its accommodation in the transaction of its business and for lease and rental; and such office building may be on ground on which the company owns a lease having not less than fifty (50) years to run from the date of its acquisition by the company, provided that the company shall own, or be entitled to the use of, all the improvements thereon, and that the value of such improvements shall at least equal the value of the ground, and shall be not less than twenty (20) times the annual average ground rentals payable under such lease; and provided such office building shall have an annual average net rental of at least twice such annual ground rental; and provided further, that such company shall be liable for and shall pay all State and local taxes levied and assessed against such ground and the improvements thereon, which for the purposes of taxation shall be deemed real estate owned by the company. Provided that an acquisition of such an office building on leased ground shall be approved by the State Board of Insurance before such investment.

Branch office buildings in the State of Texas and elsewhere within the United States wherein such company is authorized to do business as shall be requisite for its convenient accommodation in the transaction of its business and for lease and rental and also parking facilities adjacent to or in the vicinity of each office building owned by such insurance company as shall be reasonably requisite for such insurance company and tenants of the buildings; however, at least fifty per cent (50%) of the space in each such branch office building which is available for occupancy for business purposes shall be used by such insurance company for the transaction of its business and not for lease and rental to others; provided, however, that such investments in the properties described in this paragraph shall only be made in towns or cities having a population of fifteen thousand (15,000) or more according to the last Federal Census.

1(b). No such company shall make any investment in the properties described in Subdivision 1(a) above if, after making such investment, the total investment of the company in such properties is in excess of thirty-three and one-third per cent (33⅓%) of its admitted assets as of December 31st next preceding the date of such investment; provided, however, that such investment may be increased to as much as fifty per cent (50%) of the company's admitted assets

upon advance approval by the State Board of Insurance; provided further, that such investment may be further increased if the amount of such additional increase is paid for only from surplus funds and is not included as an admitted asset of the company.

1(c). The value of each such investment in the properties described in Subdivision 1(a) shall be subject to the approval by the State Board of Insurance; and the Board may, in its discretion, at the time such investment is made or any time when an examination of the company is being made, cause any such investment to be appraised by an appraiser appointed or approved by the Board, and the reasonable expense of such appraisal shall be paid by such insurance company and shall be deemed to be a part of the expense of examination of such company. No such insurance company may hereafter make any increase in the valuation of any of the properties described in Subdivision 1(a) unless and until such increased valuation shall be likewise approved by the Board, subject to the limitations and conditions set out in Subdivision 1(b);

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due;

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings;

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

5. All such real property specified in Subdivisions 2, 3, and 4 of this Article which shall not be necessary for its accommodation in the convenient transactions of its business, except interests in minerals and royalties reserved upon the sale of land acquired under such Subdivisions 2, 3, and 4 hereof prior to January 1, 1942, and further excepting interests in producing minerals or producing royalties otherwise acquired prior to April 1, 1959, shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate.

In addition to, and without limitation on, the purposes for which real property may be acquired, secured, held or retained pursuant to other provisions of this Article, every such insurance company may secure, hold, retain and convey production payments as an investment for the production of income; provided, however, that the total amount of

all such investments in production payments plus the total amount of investments in home office and branch office properties under Subdivision 1(a) of this Article shall not exceed the total amount permitted by and shall be subject to all of the limitations and restrictions of Subdivisions 1(b) and 1(c) of this Article and for this purpose all investments in production payments pursuant to the provisions of this paragraph shall be deemed to be "properties described in Subdivision 1(a)" of this Article; and provided further, that in valuing each such production payment for the purposes of Subdivision 1(c) of this Article the State Board of Insurance may establish such value as being the maximum amount which the company purchasing such production payment could loan against a first lien on such production payment under the provisions of Section 2 of Article 3.39 of the Insurance Code; and provided further, no such company shall make any investment in such production payments solely as an investment for the production of income if, after making such investment, the total investment of the company at cost in such production payments is in excess of ten per cent (10%) of its admitted assets as of December 31st next preceding the date of such investment. For the purposes of this paragraph, a production payment is defined to mean a right to oil, gas or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas or other minerals, has been received, and shall not include fee interests, leasehold interests or working interests, and shall not include royalties, overriding royalties, or other mineral interests which are not limited as set forth in the foregoing definition.

[Acts 1951, 52nd Leg., ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 13; Acts 1959, 56th Leg., p. 890, ch. 411, § 4; Acts 1961, 57th Leg., p. 627, ch. 294, § 1; Acts 1961, 57th Leg., p. 1049, ch. 467, § 4; Acts 1969, 61st Leg., p. 1529, ch. 464, § 1, eff. Sept. 1, 1969.]

#### Art. 3.40-1. Investments in Income Producing Real Estate

Sec. 1. Notwithstanding any provision or limitation of Article 3.40 of this Code, any life insurance company organized under the laws of this state may invest any of its funds and accumulations in improved income producing real estate or any interest therein, and may hold, improve, maintain, manage, lease, sell or convey such property or interest therein, subject to the following terms, conditions and limitations:

(1) The term "improved income producing real estate" as used in this Article shall include all commercial and industrial real property, a substantial portion of which has been materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the value of such real estate exclusive of buildings and improvements, as may be held or ac-

quired by purchase or lease, or otherwise, for the production of income, excepting any agricultural, horticultural, farm and ranch property, residential property, single or multiunit family dwelling property, which is expressly excluded.

(2) The total amount invested by any such company in all such income producing property and improvements thereof shall not exceed seven and one-half per centum of its admitted assets, provided, however, that the amount invested in any one such property and its improvements shall not exceed three per centum of its admitted assets. The admitted assets of the company at any time shall be determined from its annual statement made as of the last preceding December 31 and filed with the State Board of Insurance as required by law. The value of any investment made under this Article shall be subject to Subdivision 1(c) of Article 3.40 of this Code.

(3) The investment authority granted by this Article 3.40-1 is in addition to and separate and apart from that granted by Article 3.40 of this Code, provided, however, that no such company shall make any investment in the properties described in this Article 3.40-1 which when added to those described in subdivision 1(a) of Article 3.40 of this Code would be in excess of the limitations provided by subdivision 1(b) of Article 3.40 of this Code.

Sec. 2. The property owned by such life insurance company pursuant to this Article shall not be classified as "Texas Securities".

Sec. 3. Nothing contained in this Article shall permit such a life insurance company to purchase undeveloped real estate for the purpose of development or subdivision.

Sec. 4. No life insurance company may invest more than one per centum of its admitted assets in income producing real estate in any one year during the first seven years after the effective date of this Act, provided, however, if a life insurance company invests less than one per centum of its admitted assets in income producing real estate during any one year such life insurance company may thereafter, at any time, invest the difference between the percentage of admitted assets invested and one per centum of admitted assets and such percentage shall be in addition to and cumulative of the amount of income producing real estate in which such life insurance company may invest in any particular year hereunder.

[Acts 1967, 60th Leg., p. 1753, ch. 660, § 1, eff. Aug. 28, 1967.]

#### Art. 3.41. Authorized Investments in Securities or Property for Foreign Companies

The assets of any "foreign company" shall be invested in securities or property of the same classes permitted by the laws of this State as to "domestic"

companies or by other laws of this State in other securities approved by the Board of Insurance Commissioners as being of substantially the same grade. [Acts 1951, 52nd Leg., ch. 491.]

#### Art. 3.41a. Student Loans

A foreign or domestic life insurance company may make loans to a student enrolled in an institution of higher education not exceeding \$1,500 in any academic year and not exceeding \$7,500 in aggregate principal amount over a period of years, provided that the principal amount of the loans is insured by the federal government pursuant to the provisions of the Federal Higher Education Act of 1965, as amended (P.L. 89-329)<sup>1</sup>.

[Acts 1971, 62nd Leg., p. 1924, ch. 581, § 1, eff. June 1, 1971.]

<sup>1</sup>20 U.S.C.A. § 1001 et seq.

### SUBCHAPTER D. POLICIES AND BENEFICIARIES

#### Art. 3.42. Policy Form Approval

(a) No policy, contract or certificate of life, term or endowment insurance, group life or term insurance, industrial life insurance, accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical insurance, group medical or surgical insurance, or fraternal benefit insurance, and no annuity or pure endowment contract or group annuity contract, shall be delivered, issued or used in this state by a life, accident, health or casualty insurance company, a mutual life insurance company, mutual insurance company other than life, mutual or natural premium life insurance company, general casualty company, Lloyds, reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service or any other insurer, unless the form of said policy, contract or certificate has been filed with the Board of Insurance Commissioners and approved by said Board as provided in Paragraph (c) of this Article. Provided, however, that this Article shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board of Insurance Commissioners and which is entitled by statute to an exemption certificate from said Board in evidence of its exempt status; provided, further, that this Act shall not be construed to enlarge the powers of any of the insurers subject to this Article.

(b) No application form which is required to be or is attached to the policy, contract or certificate, and no rider or endorsement to be attached to, printed upon or used in connection with any policy, contract or certificate described in Paragraph (a) of this Article shall be delivered, issued or used in this state by any insurer described in Paragraph (a) of this Article unless the form of said application, rider or endorsement has been filed with the Board of Insurance Commissioners and approved by said Board as provided in Paragraph (c) of this Article. Provided, however, that this Article shall not apply to riders or endorsements which relate to the manner of distri-

bution of benefits or to the reservation of rights and benefits under such policies, contracts and certificates, and which are used at the request of the holder of the policy, contract or certificate.

(c) Every such filing hereby required shall be made not less than thirty days in advance of any such issuance, delivery or use. At the expiration of thirty days the form so filed shall be deemed approved by the Board of Insurance Commissioners unless prior thereto it has been affirmatively approved or disapproved by the written order of said Board. The Board of Insurance Commissioners may extend by not more than an additional thirty days the period within which it may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial fifteen day period and at the expiration of any such extended period, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The Board of Insurance Commissioners may withdraw any such approval at any time. Approval of any such form by such Board shall constitute a waiver of any unexpired portion of the waiting period, or periods, herein provided.

(d) The order of the Board of Insurance Commissioners disapproving any such form or withdrawing a previous approval shall state the grounds for such disapproval or withdrawal.

(e) The Board of Insurance Commissioners may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order, to which in its opinion this Article may not practically be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(f) The Board of Insurance Commissioners shall forthwith disapprove any such form, or withdraw any previous approval thereto if, and only if,

(1) It is in any respect in violation of or does not comply with this Code.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state.

(3) It has any title, heading or other indication of its provisions which is misleading.

(g) Appeals from any order of the Board of Insurance Commissioners issued under this Article may be taken to the District Court of Travis County, Texas, in accordance with Article 21.44 of Sub-Chapter F of this Insurance Code, or any amendments thereof. [Acts 1951, 52nd Leg., ch. 491; Acts 1957, 55th Leg., p. 1463, ch. 501, § 1.]

#### Art. 3.42B. Benefits Payable to Certain Hospitals

After the effective date of this Act, no insurance policy issued or delivered in this state providing hospital, nursing, medical, or surgical coverage may include a provision which would prevent payment of

benefits for expenses of a person who is a non-indigent patient incurred in a hospital facility owned or controlled by the state government or by any unit of local government, provided charges for such expenses are regularly and customarily charged to and collected from non-indigent persons by such hospital facility.

The provisions of this article shall not apply to indigent care nor to chronic disease care, in an eleemosynary institution, sanitarium, sanatorium, mental treatment facility of every type, tuberculosis treatment facility of every type, and cancer treatment facility of every type, where any such care is provided in or by any such facility (regardless of the type or name) owned or controlled by the state government or by any unit of local government. [Acts 1973, 63rd Leg., p. 1037, ch. 402, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 Act added a subsec. (D) to art. 3.70-2; § 3 thereof provided:

"Any presently approved policy form containing any provision in conflict with the requirements of this Act may continue to be issued by any insurer regulated by the provisions of this Act, provided there is attached to such previously approved policy form at time of issue a rider or endorsement amending such previously approved policy form to conform to the provisions of this Act."

#### Art. 3.42-1. Notice Included in Health Insurance Policies

(a) As used in this article, "health insurance policy" means a policy, contract, or certificate of insurance which insures against loss resulting from sickness or accidental bodily injury.

(b) No health insurance policy which is subject to an increase in the premium at time of renewal, which is subject to nonrenewal on the insured attaining a certain age, or which is subject to both of these conditions and limitations, may be delivered, issued, or used in this state unless there is printed, above the first of the policy provisions on the first page in 10-point type, notice that the policy is subject to any or all of the conditions stated in this section.

(c) Until June 1, 1974, any company may continue to use any policy form heretofore approved for issuance by the State Board of Insurance by either (i) stamping or affixing such language at the top of the first policy page or (ii) affixing an endorsement containing such required language at the top of the first page of each such policy form, either of which shall be at least in 10-point type.

[Acts 1973, 63rd Leg., p. 1249, ch. 453, § 1, eff. Aug. 27, 1973.]

Section 3 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 3.43. Repealed by Acts 1957, 55th Leg., p. 1463, ch. 501, § 2.

The repealed article was derived from Acts 1951, 52nd Leg., ch. 491 and art. 4750, R.S.1925 (Acts 1909, p. 207, § 45; R.S.1911, art. 4760). It authorized the Board of Insurance Commissioners to approve certain policy forms. See, now, art. 3.42.

**Art. 3.44. Policies Shall Contain Certain Provisions**

No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company organized under the laws of this State, unless the same shall contain provisions substantially as follows:

1. That all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy.

2. For a grace of at least one month, for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which may stipulate that if the insured shall die during the period of grace the overdue premium will be deducted in any settlement under the policy.

3. That the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for two (2) years from its date, except for non-payment of premiums, and which provisions may, at the option of the company, contain an exception for violation of the conditions of the policy relating to naval and military service in time of war.

4. That all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

5. That if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. That after three (3) full years' premiums have been paid, the company, at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the cash value of the policy and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premiums for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may also provide that such loans may be deferred for not exceeding six (6) months after the application therefor is made. It shall also be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the cash value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurance, nor

in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies.

7. Provisions for non-forfeiture benefits in the event of default in premium payments and for cash surrender values in accordance with the provisions of this Section 7 and Section 8 of this Article 3.44 in the case of policies issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law), and in accordance with provisions of Article 3.44a in the case of policies issued on or after said date. Policies issued prior to the operative date of Article 3.44a shall contain a provision substantially as follows: a provision which, in the event of default in the premium payments after premiums shall have been paid for three (3) full years, shall secure a stipulated form of insurance on the life of the Insured, the net value of which shall be equal to the reserve (exclusive of any reserve for disability or accidental death benefits) at the date of default on the policy, and on any dividend additions thereto, according to the mortality table, rate of interest and method adopted for computing such reserve, less a sum of not more than two and one-half per cent (2½%) of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy; provided, however, that if the mortality table adopted for computing such reserve is either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than one hundred thirty per cent (130%) of the rate of mortality according to such adopted table or, in case of sub-standard policies, the adopted multiple thereof; provided further, that if the mortality table adopted for computing such reserve is the Commissioners 1958 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than that shown in the Commissioners 1958 Extended Term Insurance Table, or, in case of sub-standard policies, the adopted multiple thereof; and provided further as respects policies on female risks, other than policies of industrial insurance, the net value of any such stipulated form of insurance may be calculated according to an age not more than three (3) years younger than the actual age of the insured, provided the same age differential has been used in computing the policy reserves under such policies. The policy shall state: (1) the amount and term of the stipulated form of insurance calculated upon the assumption of no indebtedness on the policy and no dividend additions thereto; and (2) the method, rate of interest, and mortality table (including

any age differential applicable in making such computations on policies issued to female risks) for computing the policy reserve, which must be such as may be authorized by law for use in computing the reserve liability of the company on such policy. Such provision shall also stipulate that the policy may be surrendered to the company at its home office within one month from the due date of any premium for its cash value, which shall be specified in the policy and which shall be at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, but not more than the reserve on the policy, and may stipulate that the company may defer payment for not more than six (6) months after application therefor is made. This provision shall not be required in term insurance.

8. In the case of policies issued prior to the operative date of Article 3.44a, a table showing in figures the cash values, and the options available under the policy each year, upon default in premium payments during the first twenty (20) years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available.

9. That if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three (3) years from such default upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest.

10. That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of or not later than two (2) months after due proof of death and the right of the claimant to the proceeds.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

Any foregoing provision, not applicable to single premium policies shall, to that extent, not be incorporated therein.

12. In all family group life insurance policies there shall be clearly stated the maximum amount which is payable to the payee in the policy in the case of the death of any insured person or persons. Regardless of what the maximum amount of said policy is or may be, any provision for payment other than the full amount of said policy shall be clearly stated in the policy.

[Acts 1951, 52nd Leg., ch. 491; Acts 1959, 56th Leg., p. 960, ch. 448, § 2; Acts 1963, 58th Leg., p. 328, ch. 123, § 1; Acts 1963, 58th Leg., p. 1117, ch. 434, § 4; Acts 1963, 58th Leg., p. 1307, ch. 498, § 1.]

### Art. 3.44a. Standard Non-forfeiture Law

Title

Sec. 1. This Article shall be known as the Standard Non-forfeiture Law.

Default in Premium Payment on Policies Issued after Operative Date of Standard Non-forfeiture Law; Paid-up Non-forfeiture Benefits and Cash Surrender Values; Mortality Tables and Interest Rates

Sec. 2. In the case of policies issued on or after the operative date of this Article (as defined in Section 10 of this Article), no policy of life insurance, except as stated in Section 9, shall be issued or delivered in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the defaulting or surrendering policyholder:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up non-forfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

(2) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years, in the case of industrial insurance, the company will pay, in lieu of any paid-up non-forfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(3) That a specified paid-up non-forfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

(4) That, if the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up non-forfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(5) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up non-forfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up non-forfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no

dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) A statement that the cash surrender values and the paid-up non-forfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up non-forfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the State in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up non-forfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

Amount of Cash Surrender Value Available Under Policy on Default  
in Premium Payment Due on Policy Anniversary

Sec. 3. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Section 2, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in Sections 5, 6 and 7, corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy. The preceding sentence shall not require any cash surrender value greater than the reserve for the policy calculated as provided by Article 3.28. Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up non-forfeiture benefit, whether or not required by Section 2, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by an indebtedness to the company on the policy.

Value of Paid-up Non-forfeiture Benefits Available Under Policy  
on Default in Premium Payment Due on Policy Anniversary

Sec. 4. Any paid-up non-forfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this Article in the absence of the condition that premiums shall have been paid for at least a specified period.

Adjusted Premiums

Sec. 5. Except as provided in the third paragraph of this Section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent (40%) of the adjusted premium for the first policy year; (iv) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this Section shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this Section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this Section except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in Sections 6 and 7, all adjusted premiums and present values referred to in this Article shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty per cent (130%) of the rates of mortality according to such applicable table. Provided further, that for insurance issued on a sub-standard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the Company and approved by the State Board of Insurance.

Calculation of Adjusted Premiums and Present Values of Ordinary Policies Issued On or After Operative Date of This Section

Sec. 6. In the case of ordinary policies issued on or after the operative date of this Section as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory Act of 1973 and

prior to January 1, 1986 and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to age not more than three years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

On or after the operative date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Industrial Policies; Adjusted Premiums and Present Values

Sec. 7. In the case of industrial policies issued on or after the operative date of this Section as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum, except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory Act of 1973 and prior to January 1, 1986. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided further, that for insurance issued on a sub-standard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

On or after the operative date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be

the operative date of this Section for such company), this Section shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Cash Surrender Values and Paid-up Non-forfeiture Benefits on  
Default in Premium Payment Due at Time Other Than  
on Policy Anniversary

Sec. 8. Any cash surrender value and any paid-up non-forfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary; provided, however, such cash surrender value or non-forfeiture benefit shall not be required unless such cash surrender value or non-forfeiture benefit was required on the preceding policy anniversary. All values referred to in Sections 3, 4, 5, 6 and 7 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall not be less than the dividends used to provide such additions. Notwithstanding the provisions of Section 3, additional benefits payable (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this Article would not apply, (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and (f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and non-forfeiture benefits required by this Article, and no such additional benefits shall be required to be included in any paid-up non-forfeiture benefits.

Application of Article

Sec. 9. This Article shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in Sections 5, 6 and 7, is less than the adjusted premium so calculated, on such twenty year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this state

through an agent or other representative of the company issuing the policy.

Notice of Election to Comply with Provisions of Standard Non-forfeiture Law

Sec. 10. After the effective date of this Act, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of Article 3.44a for such company), this Article shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be January 1, 1974.

[Acts 1963, 58th Leg., p. 1117, ch. 434, § 5; Acts 1973, 63rd Leg., p. 1068, ch. 410, §§ 1, 2, eff. June 14, 1973.]

Section 3 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 3.45. Policies Shall Not Contain Certain Provisions**

No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company incorporated under the laws of this State, if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than <sup>1</sup> two (2) years after the cause of action shall accrue.

2. A provision by which the policy shall purport to be issued or to take effect more than six (6) months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may by the terms of the policy be deducted; provided, however, that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations, or in the event the death of the insured should result from aviation activities under the conditions specified in the policy, to be approved by the Board of Insurance Commissioners, as provided in this chapter. This provision shall not apply to purely accident and health policies. No foregoing provision relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policies issued before July 10, 1909.

[Acts 1951, 52nd Leg., ch. 491.]

<sup>1</sup> So in enrolled bill. Probably should be "than."

**Art. 3.46. Level Premium Policies**

No level premium policy of life insurance shall be issued or sold by any company in this state which provides for more than one year preliminary term insurance. The provisions of this Article shall not apply to policies and contracts issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law).

[Acts 1951, 52nd Leg., ch. 491; Acts 1963, 58th Leg., p. 1117, ch. 434, § 6.]

**Art. 3.47. Policies of Foreign Companies**

The policies of a life insurance company not organized under the laws of this State may contain any provision which the law of the state, territory, district or county under which the company is organized, prescribes shall be in such policies when issued in this State; and the policies of a life insurance company organized under the laws of this State may, when issued or delivered in any other state, territory, district or county contain any provision required by the laws of the state, territory, district or county in which the same are issued, anything in this chapter to the contrary notwithstanding.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.48. Payments to Designated Beneficiaries**

Whenever any person shall procure the issuance of a policy of insurance on his or her life in any legal reserve life insurance company, and designate in writing filed with the company the beneficiary to receive the proceeds thereof, the company issuing such policy shall, in the absence of the receipt by it of notice of an adverse claim to the proceeds of the policy from one having a bona fide legal claim to such proceeds or a part thereof, pay such proceeds becoming due on the death of the insured to the person so designated as beneficiary, and such payment so made, in the absence of such notice received by the insurance company prior to the date of the payment of the proceeds, shall discharge the company from all liability under the policy.

The provisions of this article shall apply to all policies now in existence as well as to all policies hereafter written.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.49. Statutory Life Insurance Beneficiaries**

Any corporation, partnership, joint stock association or any trust estate doing business for profit, may be named beneficiary in any policy of insurance issued by a legal reserve life insurance company on the life of any officer or stockholder of said corporation, joint stock association or trust estate; or any partnership or member thereof may be the beneficiary in any policy of insurance issued by a legal reserve life insurance company upon the life of any member of said partnership; or any religious, educational, eleemosynary, charitable or benevolent institution or undertaking may be named beneficiary in any policy of life insurance issued by any legal reserve life insurance company upon the life of any

individual. The beneficiaries aforementioned shall have an insurable interest for the full face of the policy and shall be entitled to collect same. On all policies of life insurance heretofore issued by legal reserve companies in which any of the aforementioned shall have been designated beneficiaries in the policies, said beneficiaries shall have an insurable interest to the full extent of the face of the policy and be entitled to collect same.

[Acts 1951, 52nd Leg., ch. 491.]

**Art. 3.49-1. Life Insurance; Designated Beneficiaries or Owners; Insurable Interest****Designation of Beneficiaries or Owners in Application**

Sec. 1. Any person of legal age may apply for insurance on his life in any legal reserve or mutual assessment life insurance company and in such application designate in writing any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, as the beneficiary or beneficiaries, or the absolute or partial owner or owners, or both beneficiary and owner, of any policy or policies issued in connection with such application; and with respect to any such policy or policies any such beneficiary or owner so designated shall at all times thereafter have an insurable interest in the life of such person, except as provided in Section 3 hereof.

**Designation of Beneficiaries or Owners in Existing or Future Policies**

Sec. 2. Any person of legal age whose life is insured under any existing or future policy of insurance by any legal reserve or mutual assessment life insurance company may, in the manner and to the extent permitted by the policy, designate in writing as the beneficiary or beneficiaries thereof any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, and in addition, in any manner and to any extent not prohibited by the terms of the policy, may transfer or assign in writing any such policy or any interest, benefit, right or title therein to any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, and with respect to any such policy any such beneficiary, transferee or assignee shall at all times thereafter have an insurable interest in the life of such person, except as provided in Section 3 hereof.

**Exception of Persons, etc., Engaged in Business of Burying Dead**

Sec. 3. Notwithstanding the provisions thereof, no person, persons, partnership, association, corporation or other legal entity, or any combination thereof, directly or indirectly engaged in the business of burying the dead shall have or obtain, directly or indirectly, any insurable interest in the life of any person by virtue of Sections 1 or 2 hereof, or shall have an insurable interest in the life of any person unless such insurable interest be established under and by virtue of other applicable statutory or common law.

## Cumulative Effect; Liberal Construction

Sec. 4. The provisions of this Act are cumulative of existing law in Texas, statutory and otherwise, on the question of insurable interest. This Act is enacted in specific recognition of the provisions of Article 21.23 of the Texas Insurance Code, 1951, that the interest of any beneficiary in a life insurance policy is forfeited if the beneficiary is the principal or an accomplice in bringing about the death of the insured.

This Act shall be liberally construed to effectuate its purposes, and its provisions are not to be limited or restricted by previous declarations or holdings of the Courts of Texas defining the term insurable interest.

[Acts 1953, 53rd Leg., p. 400, ch. 113.]

### Art. 3.49-2. Life Insurance and Annuity Contracts with Minors Over Fourteen

A minor not less than fourteen (14) years of age and without a guardian of his estate may, notwithstanding such minority, contract for or otherwise acquire policies of life, term or endowment insurance, or annuity contracts, or both, and may exercise all rights and powers with respect to or under such policies or contracts heretofore or hereafter issued as though of full legal age, and may surrender his interests therein and give a valid discharge for any benefit or money payable thereunder, and such minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, or the exercise of any right or privilege or the receipt of any benefit or payment thereunder, subject, however, to the following conditions and limitations:

(a) This Act applies only to policies and contracts issued by a stock or mutual legal reserve life insurance company that maintains the full legal reserve required under the laws of this State, and that is licensed by the State Board of Insurance to transact the business of life insurance in this State.

(b) The policies of insurance subject to this Act shall be only those policies owned by the minor and insuring the life of the minor, his father, mother, spouse, child, brother, sister, grandfather, grandmother or a person in whose life the minor may have an insurable interest.

(c) The minor shall be the annuitant of any such annuity contract during his life.

(d) The minor, his estate, father, mother, spouse, child, brother, sister, grandfather, or grandmother shall be the beneficiary or beneficiaries of any such policies and of the death benefit of any such annuity contracts.

(e) Nothing contained in this Act shall be deemed to alter, amend or modify any provision of any policy or contract.

(f) During the time in which any such minor is not less than fourteen (14) years of age his applications for such policies and contracts and all agreements with respect to same, or the

rights, privileges, and benefits thereunder, may be made by the minor and shall also be signed or approved in writing by either his father, mother, grandfather, grandmother or adult brother or sister, or if there be none of the foregoing, then by an adult person eligible under the Texas Probate Code to be appointed guardian of the estate of such minor.

(g) If notice in writing be furnished by the father or mother of any such minor to the insurance company at its home office or its principal office in this State that they or either of them elect that this Act shall not apply to their specified minor child, then the provisions of this Act shall not apply to any transaction by or with any such specified minor child occurring subsequent to the receipt of such notice.

[Acts 1959, 56th Leg., p. 912, ch. 417, § 1.]

### Art. 3.49-3. Designation of Trustee to Receive Proceeds of Life Insurance Policies and Taxation Thereof

Sec. 1. Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance shall be paid to such trustee and be held and disposed of by the trustee as provided in a trust agreement made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary.

Sec. 2. A policy of life insurance may designate as beneficiary a trustee or trustees named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. Upon probate of the will the proceeds of such insurance shall be payable to the trustee or trustees to be held and disposed of under the terms of the will as they exist as of the date of the death of the testator and in the same manner as other testamentary trusts are administered; but if no qualified trustee makes claim to the proceeds from the insurance company within eighteen months after the death of the insured, or if satisfactory evidence is furnished to the insurance company within such eighteen month period showing that there is or will be no trustee to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured.

Sec. 3. The proceeds of the insurance as received by the trustee or trustees shall not be subject to debts of the insured nor to inheritance tax to any greater extent than if such proceeds were payable to beneficiaries other than the executor or administrator of the estate of the insured.

Sec. 4. Such insurance proceeds so held in trust may be commingled with any other assets which may properly come into such trust.

Sec. 5. Nothing in this Act shall affect the validity of any life insurance policy beneficiary designation heretofore made naming trustees of trusts established by will.

[Acts 1967, 60th Leg., p. 1821, ch. 701, § 1, eff. July 1, 1967.]

*Article 3.49-3, Life insurance and annuity contracts of a spouse, added by Acts 1967, 60th Leg., p. 735, ch. 309, § 4, effective January 1, 1968, see article 3.49-3 post.*

Acts 1967, 60th Leg., p. 1821, ch. 701, §§ 2-4 provided:

"Sec. 2. Saving Clause. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

"Sec. 3. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 4. This Act shall be effective July 1, 1967."

#### **Art. 3.49-3. Life Insurance and Annuity Contracts of a Spouse**

A spouse shall have management, control and disposition of any contract of life insurance or annuity heretofore or hereafter issued in his or her name or to the extent provided by the contract or any assignment thereof without the joinder or consent of the other spouse.

[Acts 1967, 60th Leg., p. 740, ch. 309, § 4, eff. Jan. 1, 1968.]

*Article 3.49-3, Designation of trustee to receive proceeds of life insurance policies and taxation thereof, added by Acts 1967, 60th Leg., p. 1821, ch. 701, § 1, effective July 1, 1967, see article 3.49-3 ante.*

#### **SUBCHAPTER E. GROUP, INDUSTRIAL AND CREDIT INSURANCE**

#### **Art. 3.50. Group Life Insurance**

##### **Definitions**

Sec. 1. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy

may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten (10) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Twenty Thousand Dollars (\$20,000.00), unless two hundred per cent (200%) of the annual compensation of such employee from his employer or employers exceeds Twenty Thousand Dollars (\$20,000.00), in which event all such term insurance shall not exceed Fifty Thousand Dollars (\$50,000.00), or two hundred per cent (200%) of such annual compensation, whichever is the lesser, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a

pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Article.

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this state, an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any common school district, of any such state college or university, of any such department of the state government, members of any association of state, county or city, town or village or of the United States Government or any subdivision thereof, provided the majority of such employees reside in this state, employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The persons eligible for insurance under the policy shall be all of the employees of the employer or if the policyholder is an association, all of the members of the association.

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be

applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

(c) The policy must cover at least ten (10) employees at date of issue, or if an association of employees is the policyholder, ten (10) members of said association at date of issue.

(d) The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchased, to the extent of their respective indebtedness, but not to exceed Ten Thousand Dollars (\$10,000.00) on any one life; provided, however, the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, may be so insured in an initial amount of such insurance not to exceed the total amount repayable under the contract of indebtedness and, when such indebtedness is repayable in substantially equal installments, the amount of

insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, and such insurance on such credit commitments not exceeding one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, but such insurance shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers and the employees of the trade association of such employers or all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is ac-

tively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred (100) persons; unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds Twenty Thousand Dollars (\$20,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Twenty Thousand Dollars (\$20,000.00), in which event all such term insur-

ance shall not exceed Fifty Thousand Dollars (\$50,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser.

(e) The limitation as to amount of group insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amount provided by the policy which it replaces, or the amounts provided above whichever is greater.

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(6) No policy of wholesale, franchise or employee life insurance, as hereinafter defined, shall be issued or delivered in this state unless it conforms to the following requirements:

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; or (2) the members of a labor union or unions covering at date of issue not less than five members; or (3) the members of a credit union or credit unions covering at date of issue not less than five (5) members.

(c) The premium for the policy shall be paid either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions or by

both, or partly from such funds and partly from funds contributed by the insured person, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month.

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess of Twenty Thousand Dollars (\$20,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Twenty Thousand Dollars (\$20,000.00), in which event all such term insurance shall not exceed Fifty Thousand Dollars (\$50,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser. An individual application shall be taken for each such policy and the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

(e) Each such policy of insurance shall contain a provision substantially as follows:

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by the insurer, without evidence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

(f) Each such policy may contain any provision substantially as follows:

(1) A provision that the policy is renewable at the option of the insurer only;

(2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;

(3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

(g) The limitation as to amount of group and wholesale, franchise or employee life insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan,

and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(h) Nothing contained in this Subsection (6) shall in any manner alter, impair or invalidate (1) any policy heretofore issued prior to the effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

(6A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, covering when issued not less than ten (10) agents of the principal, subject to the following requirements:

(a) As used in this section, the term "agents" shall be deemed to include general agents, subagents and salesmen.

(b) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. A policy on which no part of the premium is to be derived from funds contributed by the insured agents must insure all of the eligible agents or all of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents to the principal. A policy on which part of the premium is to be derived from funds contributed by the insured agents must cover at issue at least seventy-five percent (75%) of the eligible agents or at least seventy-five percent (75%) of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents; provided, however, that the benefits may be extended to other classes of agents as seventy-five percent (75%) thereof express the desire to be covered.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insur-

ance policy or policies issued to the principal exceeds Twenty Thousand Dollars (\$20,000.00), unless two hundred percent (200%) of the annual commissions or other fixed or ascertainable compensation of such agent from the principal exceeds Twenty Thousand Dollars (\$20,000.00), in which event all such term insurance shall not exceed Fifty Thousand Dollars (\$50,000.00), or two hundred percent (200%) of such annual commissions or other fixed or ascertainable compensation, whichever is the lesser.

(e) The insurance shall be for the benefit of persons other than the principal.

(7) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).

(8) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

(a) The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured employee or by the policyholder, provided that group term life insurance upon the life of a spouse shall not exceed the lesser of (1) Five Thousand Dollars (\$5,000.00) or (2) one-half of the amount of insurance on the life of the insured employee under the group policy; and provided that group term life insurance on the life of any minor child shall not exceed One Thousand Dollars (\$1,000.00).

(c) Upon termination of the group term life insurance with respect to the spouse of any insured employee by reason of such person's termination of employment or death, or termination of the group contract, the spouse insured pursuant to this section shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured employee.

(d) Only one certificate need be issued for delivery to an insured employee if a statement concerning any dependent's coverage is included in such certificate.

Group Life Insurance Standard Provisions

Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance of the State of Texas and formally approved by such Board, nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision, or provisions which in the opinion of the Commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; (b) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and (c) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a non-forfeiture provision or provisions which in the opinion of the Commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same non-forfeiture provisions as are required for individual life insurance policies; and provided further that subject to the terms of the policy any person insured under a group life insurance contract, whether issued before or after the effective date of this provision, may make to any person, firm, corporation, association, trust, or other legal entity, other than his employer, an absolute or collateral assignment of all of the rights and benefits conferred on him by any provision of such policy or by this section, but nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before the effective date of this section and subject to the terms of the policy an assignment by an insured before the effective date of this provision is valid for the purpose of vesting in the assignee all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment.

(1) A provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two (2) years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two (2) years during such person's lifetime nor unless it is contained in a written instrument signed by him.

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

(6) A provision that any sum becoming due by reason of the death of a person insured shall be payable to the beneficiary designated by the person insured, or his assignee, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding Two Hundred and Fifty (\$250) Dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in (8), (9), and (10) following.

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such per-

son shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination, and provided further that:

(a) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purpose of this provision, be included in the amount which is considered to cease because of such termination; and

(c) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five (5) years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one (31) days after such termination, and (b) Two Thousand (\$2,000) Dollars.

(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim

under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

#### Group Policies Unlawful Except as Authorized

Sec. 3. Except as may be provided in this Article, it shall be unlawful to make a contract of life insurance covering a group in this state, and the license to do business in Texas of any company making a contract of life insurance covering a group in this state except as may be provided in this Article may be forfeited by a suit brought for that purpose by the Attorney General of the State of Texas at the request of the State Board of Insurance.

Secs. 4, 5. Repealed by Acts 1963, 58th Leg., p. 1117, ch. 434, § 7.

[Acts 1951, 52nd Leg., ch. 491; Acts 1953, 53rd Leg., p. 853, ch. 345, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 52, ch. 18, § 1; Acts 1955, 54th Leg., p. 504, ch. 146, § 1; Acts 1955, 54th Leg., p. 686, ch. 247, § 1; Acts 1955, 54th Leg., p. 809, ch. 299, § 1; Acts 1957, 55th Leg., p. 801, ch. 336, § 1; Acts 1959, 56th Leg., p. 199, ch. 112, § 1; Acts 1959, 56th Leg., p. 812, ch. 369, § 1; Acts 1961, 57th Leg., p. 563, ch. 263, § 1; Acts 1961, 57th Leg., p. 995, ch. 434, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 134, ch. 45, § 2; Acts 1963, 58th Leg., p. 1117, ch. 434, §§ 7, 8, eff. Aug. 24, 1963; Acts 1967, 60th Leg., p. 518, ch. 223, §§ 1 to 3, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1007, ch. 437, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 500, ch. 166, § 1, eff. May 9, 1969; Acts 1969, 61st Leg., p. 1371, ch. 414, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1704, ch. 557, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1144, ch. 257, § 1, eff. May 18, 1971; Acts 1971, 62nd Leg., p. 2981, ch. 982, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1529, ch. 552, § 1, eff. June 15, 1973.]

#### Saved From Repeal

*Acts 1963, 58th Leg., p. 981, ch. 405, which amended article 3.53, relating to credit life insurance and credit accident and health insurance, provided in section 2 that the act should not repeal or broaden the provisions of this article and that the provisions of this article should remain in full force and effect after the effective date of the act, but that all credit insurance written under the authority of this article should be subject to the provisions of the act after its effective date.*

Sections 4 and 5 of Acts 1967, 60th Leg., ch. 223 provided:

"Sec. 4. That all laws or parts of laws in conflict herewith are to that extent hereby repealed; and this Act shall prevail over any conflicting provisions of law.

"Sec. 5. That if any section, paragraph, sentence, clause or word of this Act is held to be unconstitutional, the remaining portion of the same, nevertheless, shall be valid; and the Legislature hereby declares that it would have enacted this Act without such unconstitutional portion."

#### Art. 3.50-1. Guaranteeing Issuance of Policy Without Evidence of Insurability

No provision in the Insurance Code shall be construed to prohibit a life insurance company authorized to do business in this state from guaranteeing to issue individual life insurance policies insuring par-

ticipants in a qualified pension or profit-sharing plan on other than the term plan without evidence of insurability. The term "qualified pension or profit-sharing plan" means a plan meeting the requirements of Sections 401 or 403 of the United States Internal Revenue Code as now or hereafter amended, or any corresponding provisions of prior or subsequent United States revenue laws.

[Acts 1965, 59th Leg., p. 563, ch. 286, § 1.]

**Art. 3.51. Group Insurance for Employees of State and Its Subdivisions and College and School Employees**

Sec. 1. (a) The State of Texas and each of its political, governmental and administrative subdivisions, departments, agencies, associations of public employees, and the governing boards and authorities of each state university, colleges, common and independent school districts or of any other agency or subdivision of the public school system of the State of Texas are authorized to procure contracts with any insurance company authorized to do business in this state insuring their respective employees, or if an association of public employees is the policyholder, insuring its respective members, or any class or classes thereof under a policy or policies of group health, accident, accidental death and dismemberment, disability income replacement and hospital, surgical and/or medical expense insurance or a group contract providing for annuities. The dependents of any such employees or association members, as the case may be, may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The insureds' contributions to the premiums for such insurance or annuities issued to the employer or to an association of public employees as the policyholder may be deducted by the employer from the insureds' salaries when authorized in writing by the respective employees so to do. The premium for the policy or contract may be paid in whole or in part from funds contributed by the employer or in whole or in part from funds contributed by the insured employees. When an association of public employees is the holder of such a policy of insurance or contract, the premium for employees that are members of such association may be paid in whole or in part by the State of Texas or other agency authorized to procure contracts or policies of insurance under this section, or in whole or in part from funds contributed by the insured employees that are members of such association; provided, however, that any monies or credits received by or allowed to the policyholder or contract holder pursuant to any participation agreement contained in or issued in connection with the policy or contract shall be applied to the payment of future premiums and to the pro rata abatement of the insured employee's contribution therefor.

The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(b) Independent School Districts procuring policies insuring their employees under this Section may pay all or any portion of the premiums on such policies from the local funds of such Independent School District, but in no event shall any part of such premiums be paid from funds paid such districts by the State of Texas.

Sec. 2. All group insurance contracts effected pursuant hereto shall conform and be subject to all the provisions of any existing or future laws concerning group insurance.

[Acts 1951, 52nd Leg., ch. 491; Acts 1961, 57th Leg., p. 840, ch. 376, § 1; Acts 1967, 60th Leg., p. 239, ch. 126, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1007, ch. 437, § 2, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1371, ch. 414, § 2, eff. Sept. 1, 1969.]

**Art. 3.51-1. Payment of Group Insurance Premiums by Cities, Towns or Villages**

Any incorporated city, town or village in the State of Texas which is authorized by law to procure a contract insuring its respective employees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such city, town or village. This Article shall not apply to premiums applicable to any policy or portion thereof insuring the dependents of such employees.

[Acts 1963, 58th Leg., p. 323, ch. 121, § 1.]

**Art. 3.51-2. County and Political Subdivision of a County—Officials and Employees**

(a) Each county or political subdivision of a county of the State of Texas is authorized to procure contracts insuring its officials and employees or any class or classes thereof under a policy or policies of group life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any such officials and employees may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do; provided, however, no state funds shall be used to procure such contracts, nor shall any state funds be used to pay premiums under said contracts of insurance.

(b) Any county or political subdivision of a county of the State of Texas which is authorized by law to procure a contract insuring its respective officials and employees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such county or political subdivision of a county of the State of Texas; provided that the amount of group life insurance on any official or employee shall not exceed \$10,000.

[Acts 1967, 60th Leg., p. 1090, ch. 479, § 1, eff. Aug. 28, 1967.]

**Art. 3.51-3. Issuance of Group Insurance Policies to Associations of Teachers and School Administrators**

Any voluntary association of school administrators and/or teachers in public and/or private schools, colleges or universities, which association is organized on a non-profit membership basis and is incorporated under the laws of the United States or of this state, is hereby authorized to procure contracts of insurance covering any class or classes of its membership and their dependents under a policy or policies of group life, health, accident, accidental death or dismemberment, and hospital, surgical and/or medical expense insurance; and any insurance company authorized to do business in this state is hereby authorized to issue such policies to any such association under the terms and conditions set out in this Act, any contrary or inconsistent provisions in any other statute notwithstanding. Separate policies may be obtained for one or more of the aforementioned risks, and the association shall be deemed the policyholder. The premium for the policy shall be paid by the policyholder either wholly or partly from the association's funds, or partly from such funds and partly from funds contributed by insured members, or from funds wholly contributed by the insured members. The policy must cover at least twenty-five members at date of issue, and if any part or all of the premiums are to be derived from funds contributed by the insured members specifically for their insurance, the policy may be placed in force only if at least seventy-five per centum (75%) of the then eligible members or a minimum of four hundred members (whichever is less, and excluding any as to whom evidence of individual insurability is not satisfactory to the insurer) elect to make the required contributions and become insured thereunder. The amounts of insurance under the policy must be based on some plan precluding individual selection either by the insured members or by the association.

[Acts 1967, 60th Leg., p. 224, ch. 123, § 1, eff. Aug. 28, 1967.]

**Art. 3.51-4. Payment of Premiums of Group Life and Health Insurance Policies for Retirees of the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System**

The premium cost of group life, health, accident, hospital, surgical and/or medical expense insurance for retirees of the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System, shall be paid by the State of Texas, subject to the following limitations and conditions:

(a) Payment shall be from the funds of the agency, commission or board from which the

officer or employee retired, shall be limited to the same amount allowed active employees under current group life and health insurance programs of the agency, commission or board, and shall be made in accordance with rules and regulations to be established no later than September 1, 1973, by such agency, commission or board for its respective retirees.

(b) The agency, commission and board shall certify to the state comptroller of public accounts and to the state treasurer each month the amount required each month to pay the insurance premiums of the said retirees, and the State of Texas shall pay the amount so ascertained each month, beginning September 1, 1973, to such agency, commission and board.

[Acts 1973, 63rd Leg., p. 600, ch. 254, § 1, eff. June 11, 1973.]

**Art. 3.51-4A. Extension of Group Term Life Insurance to Spouses and Children**

Sec. 1. Insurance under any group term life insurance policy issued and delivered pursuant to the laws of the State of Texas, except a policy issued and delivered to a creditor pursuant to Section 1(4) of Article 3.50 of the Texas Insurance Code or pursuant to any other law of the State of Texas providing for credit life insurance, may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each insured thereunder, provided that the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder, and provided further that the amount of such insurance on the life of the spouse shall not exceed \$5,000 or one-half of the amount of insurance on the life of the aforesaid insured under said policy, whichever is less, nor shall the amount of such insurance on the life of a child exceed \$1,000.

Sec. 2. Premiums for the group term life insurance on such spouse and children may be paid by the group policyholder or by each insured under the said policy, or by the group policyholder and each such insured jointly.

Sec. 3. Upon termination of the group term life insurance with respect to the spouse of any such insured by reason of said insured's termination of employment, eligibility for such insurance, or death, or by termination of the group term life insurance policy, such spouse shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured.

Sec. 4. Only one certificate need be issued for delivery to an insured if a statement concerning any

spouse's and any child's coverage is included in such certificate.

[Acts 1973, 63rd Leg., p. 161, ch. 82, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 Act provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

### Art. 3.52. Industrial Life Insurance

#### Definitions

Sec. 1. For the purposes of this article, industrial life insurance shall mean that form of life insurance either

(a) under which the premiums are payable weekly, or

(b) under which the premiums are payable monthly or oftener, but less often than weekly, if the face amount of insurance provided in the policy is not more than One Thousand (\$1,000.00) Dollars; provided that in either case the words "Industrial Policy" are printed on the face of the policy as part of the descriptive matter thereof. When an industrial life insurance policy is issued providing for accident and health benefits, in addition to natural death benefits, the provisions of this article shall apply only to the life insurance benefits provided in the policy, except as hereinafter otherwise specifically provided.

#### Required Policy Provisions

Sec. 2. No policy of industrial life insurance shall be delivered or issued for delivery in this State, unless the same shall contain in substance the following provisions:

(a) A provision that the insured is entitled to a stated period of grace of at least four (4) weeks within which the payment of any premium after the first may be made. During such period of grace the policy shall continue in full force, but in case the policy becomes a claim during the grace period, before the overdue premiums are paid, the amount of overdue premiums may be deducted in any settlement under the policy.

(b) A provision that the policy shall constitute the entire contract between the parties, but if the insurer desires to make the application a part of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to the policy when issued, and in such case the policy shall contain a provision that the policy and the application therefor shall constitute the entire contract between the parties. The policy shall also contain a provision that all statements made by the insured or on his behalf shall in the absence of fraud be deemed representations and not warranties.

(c) A provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for two (2) years from its date, except for non-payment of premiums, and

except for violation of the conditions of the policy, if any, relating to naval or military service in time of war, and except as to provisions and conditions granting or relating to benefits in the event of total or permanent disability as defined in the policy, and those granting or relating to additional insurance specifically against death by accident or by accidental means, or to additional insurance against loss of, or loss of use of, specific members of the body.

(d) A provision that if the age of the insured has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age.

(e) Provisions for non-forfeiture benefits in event of default in premium payments and for cash surrender values in accordance with the provisions of subsections (e), (f) and (g) of this Section in the case of policies issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law), and in accordance with provisions of Article 3.44a in the case of policies issued on or after said date. Policies issued prior to the operative date of Article 3.44a shall contain a provision substantially as follows: a provision that in event of default in premium payments after premiums shall have been paid for three (3) full years there shall be available a stipulated form of insurance effective from the due date of the defaulted premium; and in event of default in premium payments after premiums shall have been paid for five (5) full years there shall be available, in lieu of the stipulated form of insurance, at the option of the insured, a specified cash surrender value. The net value of the stipulated form of insurance, and the specified cash surrender value, shall not be less than the reserve on the policy at the end of the last completed quarter of the policy year for which premiums shall have been paid, including the reserve for any paid-up additions thereto and the amount of any dividends standing to the credit of the policy, and excluding any reserve on total and permanent disability, as defined in the policy, and additional accidental death benefits, less a sum of not more than:

(1) Two and one-half per cent (2½%) of the maximum amount insured by the policy and dividend additions thereto, if any, when the issue age is under ten (10) years;

(2) Two and one-half per cent (2½%) of the current amount insured by the policy and dividend additions thereto, if any, when the issue age is ten (10) years or older; and less any existing indebtedness to the insurer on or secured by the policy.

If the mortality table adopted for computing such reserve is the 1941 Standard Industrial Mortality Table or the 1941 Sub-standard Industrial Mortality Table, then in calculating the value of the paid-up term insurance with accom-

panying pure endowment, if any, a rate of mortality may be assumed which is not more than one hundred thirty per cent (130%) of the rate of mortality according to the table used. If the mortality table adopted for computing such reserve is the Commissioners 1961 Standard Industrial Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than that shown in the Commissioners 1961 Industrial Extended Term Insurance Table, or, in the case of sub-standard policies, such other table of mortality as may be specified by the company and approved by the State Board of Insurance. The policy shall state the amount and term of the stipulated form of insurance calculated upon the assumption of no indebtedness on the policy and no dividend additions thereto.

The policy may be surrendered to the insurer at its home office within the period of grace after the due date of the defaulted premium for the specified cash surrender value, provided that the insurer may defer payment for not more than six (6) months after the application therefor is made. In the event that application, which must be in writing, for a stipulated form of insurance or the specified cash surrender value when the same are available, is not made within the grace period, it shall be provided that a stipulated form of insurance shall automatically become effective.

(f) In the case of policies issued prior to the operative date of Article 3.44a, a provision specifying the mortality table, rate of interest, and method of valuation if other than net level premium, adopted for computing the life insurance reserves on the contract.

(g) In the case of policies issued prior to the operative date of Article 3.44a, a table showing in figures the non-forfeiture options available under the policy at the end of each year upon default in premium payments during the premium paying period, but not to exceed the first twenty (20) years of the policy. Such table is to begin with the year in which such values become available. At the expiration of the period for which such values are shown in the policy, the insurer will furnish upon request an extension of such table.

(h) A provision that the policy may be reinstated within one (1) year, or, at the option of the insurer, within fifty-two (52) weeks from the date of default in payment of premiums, unless the cash surrender value has been paid or the period of extended insurance has expired, upon payment of all overdue premiums, the payment or reinstatement of any other indebtedness due to the insurer upon said policy, and upon the presentation of evidence of insurability satisfactory to the insurer. The overdue premiums may, at the option of the insurer, be subject

to interest at a rate not exceeding six (6%) per cent per annum as may be specified in the policy.

(i) A provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of, at the insurer's home office, or not later than two (2) months after such receipt of, proof of death satisfactory to the insurer and the right of the claimant to the proceeds.

(j) A title on the face of the policy briefly describing its form.

(k) In the case of an insurer issuing participating policies in this State, a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy.

(l) A provision that no agent shall have the power or authority to waive, change, or alter any of the terms or conditions of any application or any policy delivered or issued for delivery pursuant to the terms of this Article.

Any of the provisions of Section 2, or portions thereof, not applicable to nonparticipating or term policies shall, to that extent, not be incorporated therein.

The provisions of Section 2 shall not apply to policies issued or granted pursuant to the nonforfeiture provisions prescribed in clause (e) of said Section, nor shall clauses (e) and (g) of said Section be required in term insurances of twenty (20) years or less.

#### Application to Existing Policies

Sec. 3. Any policy of industrial life insurance delivered or issued for delivery in this State prior to March 29, 1941, and pursuant to the provisions of Article 3.43, and upon which premiums have been paid for three (3) full years, which does not by its terms secure, upon default in payments of premiums, to the insured or beneficiary thereof, a stipulated form of insurance, shall nevertheless entitle such insured or beneficiary to either extended or paid-up insurance, the net value of which shall be determined as is provided in clause (e) of Section 2 of this article, providing such insured or beneficiary elects and notifies the home office of the insurer in writing, prior to the expiration of the period of extended insurance, which of said two (2) forms he has elected to take; and any such insured or beneficiary failing to elect and notify the insurer in writing of such election within such time shall be deemed to have elected extended insurance.

#### Authorized Provisions

Sec. 4. In addition to the provisions required by Section 2, any policy of industrial life insurance delivered or issued for delivery in this State may contain, in substance, the following provisions, in addition to any other provision or provisions not elsewhere prohibited by this Article:

(a) A provision excluding liability or promising a benefit less than the full amount payable as a death benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations.

(b) A provision limiting the maximum amount payable on the death of an infant under fifteen (15) years of age.

Prohibited Provisions

Sec. 5. No industrial life insurance policy delivered or issued for delivery in the State of Texas shall contain any provision which (a) limits the time within which any action at law or in equity may be commenced to less than two (2) years after the cause of action shall accrue; (b) except as otherwise provided herein, provides for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions thereto, if any, less any indebtedness to the insurer on the policy, and less any premium that may, by the terms of the policy, be deducted, and provided also that this provision shall not prevent an additional accidental death benefit being limited so as not to be payable in event of death from certain causes of accidents; and further providing that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane or by following stated hazardous occupations or in the event the death of the insured should result from aviation activities under the conditions specified in the policy to be approved by the Board of Insurance Commissioners as provided in Chapter 3 of this code.

Approval of Policy, Rider, Endorsement, Etc., By Board of Insurance Commissioners

Sec. 6. No insurance company transacting business in this State shall hereafter deliver or issue for delivery in this State any policy of industrial life insurance, or any policy of industrial life insurance providing for accident and health benefits in addition to natural death benefits, or attach to, or print or stamp upon such policy, any rider, or endorsement, until the form of such policy, rider, or endorsement has been submitted to and approved by the Board of Insurance Commissioners of the State of Texas. It shall be the duty of the Board of Insurance Commissioners to disapprove any such policy, rider, or endorsement if it violates any of the provisions of this article, and to give written notice to the insurer of such disapproval in which notice the Board shall specify the particulars in respect to which the policy, rider, or endorsement violates the provisions of this article. If the Board of Insurance Commissioners shall disapprove any such policy, rider, or endorsement, the insurer may, within ninety (90) days after the mailing of the written notice of such disapproval by the Board, institute proceedings in the District Court of Travis County, Texas, to review the action of the Board thereon.

Associations Excepted

Sec. 7. This article shall not apply to local mutual aid associations or state-wide mutual life, health, and accident companies and burial associations operating under Chapter 14 of this code, but this article and no other shall apply to and govern the form and content of industrial life insurance policies as they are defined herein, issued by all other insurance companies.

Certain Non-Profit Organizations Excepted

Sec. 8. Nothing contained in this article shall be so construed as to affect or apply to orders, societies, associations, or labor organizations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and who do not operate for profit; nor shall this article apply to the ladies societies or ladies auxiliaries to such orders, societies, associations, or labor organizations, nor to fraternal orders, associations, and societies.

[Acts 1951, 52nd Leg., ch. 491; Acts 1963, 58th Leg., p. 1117, ch. 434, § 9; Acts 1963, 58th Leg., p. 1307, ch. 498, § 2.]

Art. 3.53. Credit Life Insurance and Credit Accident and Health Insurance

Purpose

Sec. 1. The purpose of this Act is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this Act is intended to prohibit or discourage reasonable competition. The provisions of this Act shall be liberally construed.

Scope and Definitions

Sec. 2. A. Citation and Scope.

(1) This Act may be cited as "The Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

(2) All life insurance and all accident and health insurance sold in connection with loans or other credit transactions of less than five (5) years duration, the premium for which is charged to or paid for in whole or in part either directly or indirectly by the debtor, shall be subject to the provisions of this Act, regardless of the nature, type or plan of the credit insurance coverage or premium payment system, except where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

B. Definitions.

For the purpose of this Act:

(1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer or employee of any of them or any other person in anyway associated with any of them;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction;

(6) "Commissioner" means The Commissioner of Insurance;

(7) "State Board of Insurance" means the three (3) member State Board of Insurance.

Forms of Credit Life Insurance and Credit Accident and Health Insurance

Sec. 3. Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

A. Individual policies of life insurance issued to debtors on the term plan;

B. Individual policies of accident and health insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

C. Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

D. Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

Amount of Credit Life Insurance and Credit Accident and Health Insurance

Sec. 4. A. Credit Life Insurance.

(1) The initial amount of credit life insurance on any debtor shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.

B. Credit Accident and Health Insurance.

The total amount of indemnity payable by credit accident and health insurance in the event of disability as defined in the policy on any debtor, shall not exceed the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

Term of Credit Life Insurance and Credit Accident and Health Insurance

Sec. 5. The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy or the date of enrollment for coverage under the group policy, whichever is later. Where evidence of insurability is required and such evidence is furnished more than thirty (30) days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen (15) days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in Section 8.

Provisions of Policies and Certificates of Insurance; Disclosure to Debtors

Sec. 6. A. All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

B. Each individual policy or group certificate of credit life insurance, and/or credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor and, in the case of a certificate under a group policy, the identity by name or otherwise of the person or persons insured, the full amount of premium or the total identifiable insurance charge, if any, to the debtor, separately for credit life insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the

creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

C. Said individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as hereinafter provided.

D. If said individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the full amount of premium or the total identifiable insurance charge, if any, to the debtor, separately for credit life insurance and credit accident and health insurance, the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this Subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty (30) days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in Section 5.

E. If the named insurer does not accept the risk, then and in such event the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund shall be made.

#### Filing, Approval and Withdrawal of Forms

Sec. 7. A. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the Commissioner.

B. The Commissioner shall within thirty (30) days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided therein are not reasonable in relation to the premium charge, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are con-

trary to any provision of the Insurance Code or of any rule or regulation promulgated hereunder.

C. If the Commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the Commissioner shall specify the reason for his disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of thirty (30) days after it has been so filed, unless the Commissioner shall give his prior written approval thereto.

D. The Commissioner may, at any time after a hearing held not less than twenty (20) days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in Subsection B above. The written notice of such hearing shall state the reason for the proposed withdrawal.

E. It shall not be lawful for the insurer to issue such forms or use them after the effective date of such withdrawal.

F. If a group policy of credit life insurance or credit accident and health insurance

(i) has been delivered in this State before the effective date of this Act, or

(ii) has been or is delivered in another State before or after the effective date of this Act,

the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in Subsection B of Section 6 of this Act and such certificate shall be approved by the Commissioner if it conforms with the requirements specified in said Subsection and if the schedule of premium rates applicable to the insurance evidenced by such certificate or notice is not in excess of the insurer's schedule of premium rates filed with the Commissioner; provided, however, the premium rate in effect on existing group policies may be continued until the first policy anniversary date following the date this Act becomes operative as provided in Section 12.

G. Any order or final determination of the Commissioner under the provisions of this Section shall be subject to the appeal and review provisions of Article 1.04, Insurance Code of Texas.

#### Premiums and Refunds

Sec. 8. A. Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the Commissioner. No insurer shall issue any credit life insurance policy or credit accident and health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the Commissioner.

B. Each individual policy, or group policy and group certificate shall provide that in the event of termination of the indebtedness or the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, no refund need be made if the amount thereof is less than One Dollar (\$1). The formula to be used in computing such refund shall be filed with and approved by the Commissioner.

C. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

D. The amount charged to a debtor by the creditor for any credit life or credit accident and health insurance issued to the debtor shall not exceed the actual premium charged the creditor by the insurer for such insurance, as computed at the time the charge to the debtor is determined.

#### Issuance of Policies

Sec. 9. All policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses issued by the Commissioner. The premium or cost of such insurance allowed herein shall not be deemed interest, or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any benefit or return or other gain or advantage to the creditor arising out of the sale or provision of such insurance shall not be deemed a violation of any law, General or Special, of the State of Texas.

#### Claims

Sec. 10. A. All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

B. All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

C. No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in settling or adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks

in payment of claims due to the group policyholder subject to audit and review by the insurer.

#### Existing Insurance—Choice of Insurer

Sec. 11. When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this State.

#### Enforcement

Sec. 12. The State Board of Insurance may, after notice and hearing, issue such rules and regulations as it deems appropriate for the supervision of this Act. Whenever the Commissioner finds that there has been a violation of this Act or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the Commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the Commissioner on the date specified unless sooner withdrawn by the Commissioner or a review thereof and appeal therefrom has been taken to the State Board of Insurance or the Courts under Article 1.04, Insurance Code of Texas. The provisions of Sections 5, 6, 7 and 8 of this Act shall not be operative until ninety (90) days after the effective date of this Act, and the Commissioner in his discretion may extend by not more than an additional ninety (90) days the initial period within which the provisions of said Sections shall not be operative.

#### Judicial Review

Sec. 13. Any party to any proceeding affected by an order of the Commissioner or the State Board of Insurance shall be entitled to judicial review by following the procedure set forth in Article 1.04, Insurance Code of Texas.

#### Penalties

Sec. 14. In addition to any other penalty provided by law, any person, firm or corporation which violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Texas a sum not to exceed Two Hundred and Fifty Dollars (\$250) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed One Thousand Dollars (\$1,000). The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such violation. Such order for suspension or revocation shall be upon notice and hear-

ing, and shall be subject to judicial review as provided in Section 13 of this Act.

[Acts 1951, 52nd Leg., ch. 491; Acts 1963, 58th Leg., p. 981, ch. 405, eff. Aug. 23, 1963.]

Section 2 of the 1963 amendatory act provided:

"Sec. 2. Saving Clause. The provisions of this Act shall be cumulative of, supplemental and in addition to the provisions of Senate Bill 15, as passed by the Fifty-eighth Legislature, Regular Session, 1963, entitled 'Texas Regulatory Loan Act,' and the provisions of this Act shall not in any manner repeal, amend or modify said Senate Bill 15, nor shall it be so construed, but to the contrary, this Act shall be so construed as to be consistent with the provisions of said Senate Bill 15.

"Further, the provisions of this Act shall not repeal or broaden the provisions of Article 3.50, Texas Insurance Code, as amended, and the provisions of such Article 3.50 shall remain in full force and effect after the effective date hereof, but all credit insurance written under the authority of said Article 3.50 shall be subject to the provisions of this Act after the effective date hereof."

#### SUBCHAPTER F. MISCELLANEOUS PROVISIONS

##### Art. 3.54. Limitation of Business

It shall be unlawful for any insurance company incorporated or licensed under the provisions of this chapter to take any kind of risks or issue any policies of insurance, except those of life, accident or health; nor shall the business of life insurance in this State be in anywise conducted or transacted by any company which, in this or any other State or country, is engaged or concerned in writing any kinds of insurance other than life, health and accident insurance. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

##### Art. 3.55. Board May Revoke Certificate

If any such insurance company, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this chapter, the Board of Insurance Commissioners upon ascertaining such fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of its intention to revoke its certificate of authority to transact business in this State at the expiration of thirty (30) days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty (30) days, it shall be the duty of said Board to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one (1) year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the Board in revoking its certificate of authority to do business in this State may bring suit against said Board in Travis County to annul and vacate the order revoking such certificate. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

##### Art. 3.55-1. Hazardous Financial Condition

(1) Whenever the financial condition of any company transacting the kinds of business authorized in this Chapter, when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the company and the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid and required policy reserve increases,

indicates a condition such that the continued operation of the company might be hazardous to its policyholders, creditors or the general public, then the Commissioner of Insurance may, after notice and hearing, order the company to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) to reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) to reduce the volume of new business being accepted;

(c) to reduce general insurance and commission expenses by specified methods;

(d) to suspend or limit the writing of new business for a period of time; or

(e) to increase the company's capital and surplus by contribution.

(2) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of any company transacting the kinds of business authorized in this Chapter; which standards shall be consistent with the purposes expressed in paragraph (1) of this Article.

(3) The Commissioner of Insurance is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation or reorganization, and method of operations of an insurance company that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the Commissioner of Insurance and insurance regulatory authorities of such other jurisdictions.

(4) The authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction or diminution thereof. [Acts 1973, 63rd Leg., p. 1384, ch. 533, § 2, eff. Aug. 27, 1973.]

##### Art. 3.56. Failure to Report or Invest

If any such company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the Board of Insurance Commissioners under authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this State, or after it shall cease to write new business or cease to hold such certificate, such failure or refusal shall subject such company, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to

the payment of a penalty of Twenty-five (\$25.00) Dollars per day for each day that such company shall remain in default after the Board shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit that may be brought by the Attorney General in behalf of the State in the District Court of Travis County. In any suit brought to recover such penalty, there shall be a prima facie presumption subject to rebuttal, that any default that may have occurred was intentional; that the notice required by this chapter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 3.56-1. False Statement by Officer of Foreign Company**

Any officer of any insurance company not organized under the laws of this State, who shall file with the Commissioner of Insurance any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be imprisoned in the penitentiary for a term of not less than one year.

[1925 P.C.]

#### **Art. 3.57. Must Have Certificate of Authority**

No foreign or domestic insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Board of Insurance Commissioners a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. Such certificate of authority shall expire on the day fixed by the Board under Articles 3.06 and 3.08 of this code and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

*Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.*

#### **Art. 3.58. Failure to Renew Certificate**

Any company which shall fail to renew its certificate of authority or continue to write new business in this State, shall, nevertheless, have the right to maintain agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 3.59. Companies Renewing Business**

Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this State, which has heretofore ceased, or may hereafter cease writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this State, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this State, report under oath to the Board of Insurance Commissioners the gross amount of premiums so collected from citizens of this State upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the State a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this State, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this State, the penalties provided for the failure to pay such taxes and make such report in the past shall be remitted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 3.60. Impairment of Capital Stock**

Any such insurance company transacting business within this State, whose capital stock shall become impaired to the extent of thirty-three and one-third (33 $\frac{1}{3}$ %) per cent thereof, computing its liabilities in the manner provided by the laws of this State, shall make good such impairment within sixty (60) days by reduction of its capital stock (provided such capital stock shall in no case be less than the minimum amount required of such company by law), and failing to make good such impairment within said time shall forfeit its right to write new business in this State until said impairment shall have been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in the manner provided by the laws of this State for the computation of such reserve liability. No company shall write new business unless it is possessed of the minimum capital required by this Chapter 3, except to the extent it may be otherwise expressly authorized by this Code to do so.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 14.]

#### **Art. 3.61. Certificate Null and Void; When**

If any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company fails to pay off and satisfy any execution that may lawfully

issue on any final judgment against said company within thirty (30) days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this State, or out of it, such officer shall immediately certify such demand and failure to the Board of Insurance Commissioners; and thereupon the Board shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this State until such execution shall be fully satisfied and discharged, and until such Board shall renew its certificate of authority to such company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 3.62. Delay in Payment of Losses; Penalty For**

In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. Such attorney fee shall be taxed as a part of the costs in the case. The Court in fixing such fees shall take into consideration all benefits to the insured incident to the prosecution of the suit, accrued and to accrue on account of such policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 3.62-1. Delay in Payment of Losses on Policies Issued by Casualty and Other Companies; Penalty**

In all cases where a loss occurs and the general casualty company, state-wide mutual assessment associations, local mutual aid associations, mutual casualty company, Lloyds organization, reciprocal exchange, liable therefor under a life, health, or accident policy issued by any such insurer shall fail to pay the same within sixty (60) days after filing written proof of loss thereof, such insurer shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve percent (12%) damages on the amount of such loss, together with reasonable attorneys fees for the prosecution and collection of such loss. Such attorneys fees shall be taxed as a part of the costs in the case. The court in fixing such fees shall take into consideration all benefits to the insured incident to the prosecution of the suit, accrued and to accrue on account of such policy.

Provided, however, where for any reason the holder of said policy is unable to furnish the insurer a certified copy of the death certificate of the insured within the sixty (60) day period, then the provisions of this Act relating to attorneys fees shall not apply. [Acts 1957, 55th Leg., p. 1161, ch. 387, § 1; Acts 1961, 57th Leg., p. 862, ch. 381, § 1.]

**Art. 3.63. To Sue and Be Sued**

Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any person other than the Board of Insurance Commissioners for the enjoining, restraining or interfering with the prosecution of the business of the company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 3.64. Service of Process on Domestic Companies**

Process in any civil suit against any "domestic" company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 3.65. Shall File Power of Attorney**

Each "foreign company" engaged in doing or desiring to do business in this State shall file with the Board of Insurance Commissioners an irrevocable power of attorney, duly executed, constituting and appointing the Chairman of the Board and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said Chairman of the Board, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect premiums of insurance from citizens of this State, and so long as it shall have outstanding policies in this State, and until all claims of every character held by the citizens of this State, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or a vice president and the secretary of such company whose signature shall be attested by the seal of the company, and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this State to take acknowledgments. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution, duly

certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the Board, and shall be recorded by it in a book kept for that purpose, there to remain a permanent record of said department.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 3.66. Chairman's Duty in Accepting Service

Whenever the Chairman of the Board of Insurance Commissioners shall accept service or be served with citation in any suit pending against any "foreign company" in this State, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this State, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten (10) days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail at Austin, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 3.67. Director Not to Do Certain Things

No director or officer of any insurance company transacting business in or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 3.67-1. Director or Officer Pecuniarily Interested; Penalty

No director or officer of any insurance company transacting business in this State, or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property or any loan from such company, nor be pecuniarily interested either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan. Nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower not in excess of the reserve value thereof. Any person violating any provision of this article shall be fined not less than three hundred nor more than one thousand dollars.

[1925 P.C.]

<sup>2</sup> West's Tex.Stats. & Codes—28

#### Art. 3.68. No Commissions Paid Officers

No life insurance company transacting business in this State shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company. Should any company violate any provision of this article, it shall be the duty of the Board of Insurance Commissioners to revoke its certificate of authority to transact business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 3.69. Governed by Other Laws

The laws governing corporations in general shall apply to and govern insurance companies organized or operating under this Chapter 3 in so far as same are not inconsistent with the provisions of this chapter.

[Acts 1955, 54th Leg., p. 916, ch. 363, § 15.]

### SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

#### Art. 3.70-1. Definitions; Scope of Act

(A) Definitions. As used in this Act,<sup>1</sup> "Board" shall mean the Board of Insurance Commissioners of the State of Texas. The term "policy of accident and sickness insurance" as used herein, includes any policy or contract providing insurance against loss resulting from sickness or from bodily injury or death by accident or both.

(B) Scope of Act. This Act shall apply to and govern accident and sickness insurance policies issued in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or inter-insurance exchanges or any other insurer which by law is required to be licensed by the Board of Insurance Commissioners; provided, however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 1.]

<sup>1</sup> Article 3.70-1 et seq.

**Art. 3.70-2. Form of Policy; Designation of Practitioners of the Healing Arts; Dependent Children**

(A) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(1) the entire money and other consideration therefor are expressed therein or in the application, if it is made a part of the policy; and

(2) the time at which the insurance takes effect and terminates is expressed therein; and

(3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policy holder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed twenty-five years, and any other person dependent upon the policy holder; and

(4) the style, arrangement and over-all appearance of the policy gives no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers (except copies of applications and identification cards) are plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions); and

(5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in Section 3 of this Act,<sup>1</sup> are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions"; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or shortrate table filed with the Board; and

(8) it shall have printed thereon or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten (10) days of its delivery to such person and to have the premium paid refunded if, after examination of the policy, such person is not satisfied with it for any reason. If such person pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. This subdivision shall not apply to single premium nonrenewable policies.

(B) No policy of accident and sickness insurance shall make benefits contingent upon treatment or examination by a particular practitioner or by particular practitioners of the healing arts hereinafter designated unless such policy contains a provision designating the practitioner or practitioners who will be recognized by the insurer and those who will not be recognized by the insurer. Such provision may be located in the "Exceptions" or "Exceptions and Reductions" provisions, or elsewhere in the policy, or by endorsement attached to the policy, at the insurer's option. In designating the practitioners who will and will not be recognized, such provision shall use the following terms: Doctor of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of Chiropractic, Doctor of Optometry, Doctor of Podiatry. For purposes of this Act, such designations shall have the following meanings:

Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";

Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";

Doctor of Dentistry: One licensed by the State Board of Dental Examiners;

Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;

Doctor of Optometry: One licensed by the Texas State Board of Examiners in Optometry; and

Doctor of Podiatry: One licensed by the State Board of Chiropody Examiners.

(C) Any policy of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Texas Insurance Code, as amended, delivered or issued for delivery in this state, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the insured for support and mainte-

nance. Proof of the incapacity and dependency shall be furnished to the insurer by the insured within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

*[Text of subsec. (D) added by Acts 1973, 63rd Leg., p. 1038, ch. 402, § 2]*

(D) No individual policy or group policy of accident and sickness insurance delivered or issued for delivery to any person in this state which provides coverage for mental illness or mental retardation or both mental illness and mental retardation shall exclude benefits for the support, maintenance and treatment of such mental illness or mental retardation provided by a tax supported institution of the State of Texas, including community centers for mental health and mental retardation services, provided charges for the care or treatment of such mental illness or mental retardation are regularly and customarily charged to non-indigent patients by such tax supported institution. In determining whether or not a patient is a non-indigent patient, as provided in Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), such tax supported institution shall consider any insurance policy (or policies) which provides coverage for mental illness or mental retardation or both mental illness and mental retardation to such patients.

*[Text of subsec. (D) added by Acts 1973, 63rd Leg., p. 1076, ch. 413, § 1]*

(D) No individual policy or group policy of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Texas Insurance Code, as amended, delivered or issued for delivery to any person in this state which provides for accident and sickness coverage of additional newborn children or maternity benefits, may be issued in this state if it contains any provisions excluding or limiting initial coverage of a newborn infant for a period of time, or limitations or exclusions for congenital defects of a newborn child.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 2; Acts 1965, 59th Leg., p. 329, ch. 154, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 57, ch. 32, § 1, eff. Jan. 1, 1968; Acts 1971, 62nd Leg., p. 1557, ch. 418, § 1, eff. Jan. 1, 1972; Acts 1973, 63rd Leg., p. 1038, ch. 402, § 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1076, ch. 413, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 3.70-3.

Section 2 of the amendatory act of 1965 provided that the act should take effect on January 1, 1966.

Section 2 of the amendatory act of 1967 amended article 3.70-8; sections 3 to 5 thereof provided:

"Sec. 3. This Act shall take effect January 1, 1968, and shall apply to all accident and sickness policies issued and delivered in the State of Texas or issued for delivery in the State of Texas after such date, but shall not apply to any policies issued and delivered in the State of Texas or issued for delivery in the State of Texas prior to such date. With respect to any policy forms approved by the State Board of Insurance prior to the effective date hereof, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders, provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act.

"Sec. 4. All laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of the conflict only.

"Sec. 5. If any Section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining Sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

The 1971 amendatory act, which by sections 1 and 2 added subsection (C) to this article and amended article 3.70-8 respectively, in sections 3 to 5 thereof provided:

"Sec. 3. This Act shall take effect January 1, 1972, and shall apply to all accident and sickness policies issued and delivered in the State of Texas or issued for delivery in the State of Texas after that date but shall not apply to any policies issued and delivered in the State of Texas or issued for delivery in the State of Texas prior to that date. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders, provided the endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act.

"Sec. 4. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of the conflict only.

"Sec. 5. If any section, paragraph, or provision of this Act is declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, and they shall remain in full force and effect."

Acts 1973, 63rd Leg., p. 1076, ch. 413, § 1, which added a subsec. (D) to this article, provided in §§ 2, 3:

"Sec. 2. This Act shall apply to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in the State of Texas on and after January 1, 1974. The insurer, upon a renewal, extension, or amendment, may charge such additional premiums as are just and reasonable for the additional risk incurred by compliance with this Act. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act and other provisions of the Texas Insurance Code.

"Sec. 3. If any provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining provisions of this Act, but the remaining provisions shall remain in full force and effect."

### Art. 3.70-3. Accident and Sickness Policy Provisions

(A) Required Provisions. Except as provided in paragraph (C) of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Board which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during

such initial two-year period, nor to limit the application of Section 3(B), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestible":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of . . . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium

tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every . . . . . (insert a number not less than one nor more than six) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of . . . . . (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in

the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of . . . . . (insert a number not less than one nor more than six) months preceding the date on which such notice is actually given).

(6) A provision as follows:

**Claim Forms:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

**Proofs of Loss:** Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

**Time of Payment of Claims:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

**Payment of Claims:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or

to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. . . . . (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

**Physical Examinations and Autopsy:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

**Legal Actions:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

**Change of Beneficiary:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

## (B) Other Provisions.

Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Board which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

## (1) A provision as follows:

**Change of Occupation:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

## (2) A provision as follows:

**Misstatement of Age:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

## (3) A provision as follows:

**Other Insurance in This Insurer:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . .

(insert type of coverage or coverages) in excess of \$. . . . . (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate; or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

## (4) A provision as follows:

**Insurance With Other Insurers:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro-rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision, there shall be added to the caption of the foregoing provision the phrase: "Expense Incurred Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Board. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability

statute) whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(5) A provision as follows:

**Insurance With Other Insurers:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase: "Other Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Board. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(6) A provision as follows:

**Relation of Earnings to Insurance:** If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is

made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars (\$200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Board or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision as follows:

**Unpaid Premium:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(8) A provision as follows:

**Cancellation:** The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return

promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro-rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(9) A provision as follows:

**Conformity With State Statutes:** Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(10) A provision as follows:

**Illegal Occupation:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows:

**Intoxicants and Narcotics:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(C) Inapplicable or Inconsistent Provisions.

If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Board, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(D) Order of Certain Policy Provisions.

The provisions which are the subject of subsections (A) and (B) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(E) Third Party Ownership.

The word "insured" as used in this Act,<sup>1</sup> shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(F) Requirements of other Jurisdictions.

(1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this Act and which is prescribed or required by the law of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(G) Filing Procedure.

The Board may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this Act as are necessary, proper or advisable to the administration of this Act. This provision shall not abridge any other authority granted the Board by law.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 3; Acts 1969, 61st Leg., 2nd C.S., p. 118, ch. 11, § 1, eff. Sept. 19, 1969.]

<sup>1</sup> Article 3.70-1 et seq.

**Art. 3.70-4. Conforming to Statute**

(A) Other Policy Provisions.

No policy provision which is not subject to Section 3 of this Act<sup>1</sup> shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this Act.

(B) Policy Conflicting with this Act.<sup>2</sup>

A policy delivered or issued for delivery to any person in this state in violation of this Act shall be held valid but shall be construed as provided in this Act. When any provision in a policy subject to this Act is in conflict with any provision of this Act, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this Act.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 4.]

<sup>1</sup> Article 3.70-3.

<sup>2</sup> Article 3.70-1 et seq.

**Art. 3.70-5. Application**

(A) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any

action or proceeding based upon or involving such policy or its reinstatement or renewal.

(B) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(C) The falsity of any statement in the application for any policy covered by this Act may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 5.]

#### Art. 3.70-6. Notice; Waiver

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this Act,<sup>1</sup> or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 6.]

<sup>1</sup> Article 3.70-1 et seq.

#### Art. 3.70-7. Age Limit

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 7.]

#### Art. 3.70-8. Non-application to Certain Policies

Nothing in this Act shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance except as provided in Section 2, Subsections (B) and (C);<sup>1</sup> or (4) life insurance endowment or annuity contracts or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value, special benefit, or an annuity in the event that the insured

or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract, or (5) any policy written under the provisions of Senate Bill No. 208, Acts of the 51st Legislature, 1949.<sup>2</sup>

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 8; Acts 1967, 60th Leg., p. 57, ch. 32, § 2, eff. Jan. 1, 1968; Acts 1971, 62nd Leg., p. 1557, ch. 418, § 2, eff. Jan. 1, 1972.]

<sup>1</sup> Article 3.70-2(B), (C).

<sup>2</sup> Article 3.53.

#### Art. 3.70-9. Violation

Any person, partnership or corporation wilfully violating any provision of this Act<sup>1</sup> or order of the Board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed Five Hundred Dollars (\$500.00) for each such violation, which may be recovered by a civil action. The Board may also suspend or revoke the license of an insurer or agent for any such wilful violation.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 9.]

<sup>1</sup> Article 3.70-1 et seq.

#### Art. 3.70-10. Notice and Hearing; Judicial Review

No general rule, regulation or order shall be adopted by the Board relating to any matter covered by this Act, except after hearing upon at least ten days prior notice by mail to all insurers to whom this Act applies. If any insurer be dissatisfied with any decision, regulation, order, rule, act, or administrative ruling adopted by the Board under the provisions of this Act,<sup>1</sup> such dissatisfied insurer may file a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in a District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. The filing of such suit shall operate as a stay of any such rule, regulation, decision or finding of the Board until the court directs otherwise. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 10.]

<sup>1</sup> Article 3.70-1 et seq.

#### Art. 3.70-11. Use of Previously Authorized Policies, Riders and Endorsements During Five Years After Effective Date of Act

A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery

to any person in this state immediately before the effective date of this Act may be used or delivered or issued for delivery to any such person during five years after the effective date of this Act without being subject to the provisions of Sections 2, 3, or 4 of this Act.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 13.]

#### Art. 3.71. Texas 65 Health Insurance Plans

Sec. 1. Notwithstanding any contrary or inconsistent provision of any law, two or more insurance companies authorized to separately do such an insurance business in this state, including stock companies, reciprocals, or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide mutual assessment corporations and local mutual aid associations, and stipulated premium companies, may join together to offer, sell and administer hospital, surgical and medical expense insurance plans under a group policy covering residents of this state who are sixty-five (65) years of age and older and their spouses on which policy each insurance carrier shall be severally liable, and such companies may agree with respect to premium rates, policy provisions, sales, administrative, technical and accounting procedures and other matters within the scope of this Article. Such companies may issue such insurance policies in their own names or in the name of an unincorporated association, trust, or other organization formed for the sole purposes of this Article and evidenced by a contract in writing executed by the participating insurance companies, and any unincorporated associations, trusts, or other organizations heretofore formed for the sole purpose of this Article and evidenced by a contract in writing executed by the participating insurance companies is hereby ratified, confirmed and approved and validated from the date of its formation. Any such policy may be executed on behalf of the insurance companies by a duly authorized person and need not be countersigned on behalf of any such company by a resident agent. Any person who is licensed as a life insurance agent or as a local recording agent or as a solicitor under the provisions of Articles 21.07, 21.07-1, or Article 21.14 of the Insurance Code of the State of Texas, may act as such agent in connection with policies of insurance or certificates of insurance issued by any unincorporated association, trust or other organization formed for the sole purposes of this Article without the necessity of notifying the State Board of Insurance that such person is appointed to so act.

Sec. 2. The insurance companies participating in the insurance plans authorized by this Article shall be subject to regulation under the laws of this state, and the forms of the applications, certificates, policies and other evidence of such insurance shall be subject to the requirements of Article 3.42 of this Insurance Code. There shall be filed with the State Board of Insurance by or on behalf of such companies a true copy of any contract of association or

organization or trust agreement entered into by such companies pursuant to this Article, the schedule of premium rates to be charged for the insurance, and the plan for operating and marketing such insurance. No such contract, schedule or plan shall be effective unless and until approved by the State Board of Insurance, provided, however, that at the expiration of thirty days after the filing of any such contract, schedule or plan, it shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of said Board. If after notice and public hearing the said Board shall at any time find that under reasonable assumptions the premium rates charged for such insurance, or the plan for operating and marketing same are excessive, inadequate or contrary to the public interest, or that any activity or practice in connection with such insurance is unfair, unreasonable or contrary to the public interest, it shall disapprove such premium rates or plan or such activity or practice and shall require the discontinuance thereof within not less than thirty days from the date of its order containing such finding.

Sec. 3. Any unincorporated association, trust or other organization formed under the authority of this Article may sue and be sued in its association, trust or organization name. Process in any civil suit against any such association, trust or organization may be served on the president, secretary or managing agent thereof or on the Chairman of the State Board of Insurance. Such service shall have the same force and effect as if such service had been made upon all members of the association, trust or other organization. In the event of such service on the Chairman of the State Board of Insurance he shall immediately forward the same by registered mail, postage prepaid, to the president, secretary or managing agent of such association, trust or other organization at the last known address thereof according to the records of the State Board of Insurance.

Sec. 4. Notwithstanding any contrary or inconsistent provision of any law of this state, all premiums received on account of the group insurance authorized by this Article are hereby expressly exempted and excluded from any and all premium taxes of any kind imposed by any other law of this state.

Sec. 5. No association, trust or other organization formed and operated in accordance with this Article and no insurance business conducted in accordance with this Article shall be deemed to be a combination in restraint of trade, or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily or to otherwise violate the anti-trust laws of this state.

[Acts 1963, 58th Leg., p. 443, ch. 157, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 490, ch. 252, § 1, eff. May 24, 1965.]

**Art. 3.72. Variable Annuity Contracts****Variable Annuity Contracts Defined**

Sec. 1. When used in this article the term "variable annuity contract" shall mean any annuity contract issued by an insurance company providing for the dollar amount of annuity benefits or other contractual payments or values thereunder to vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account in which amounts received in connection with such contracts shall have been placed and accounted for separately and apart from other investments and accounts; provided, however, that "variable annuity contracts," issued under this Article 3.72 shall not be deemed to be a "security" or "securities" as defined in The Security Act (Acts 1957, 55th Legislature, page 575, Chapter 269)<sup>1</sup> nor subject to regulation under said Act.

<sup>1</sup> Civil Statutes, art. 581-1 et seq.

**Qualification of Insurers**

Sec. 2. No domestic insurance company shall issue, deliver or use any variable annuity contract and no foreign insurance company authorized to transact business in this state shall issue, deliver or sell any variable annuity contract in this state unless and until such company shall have satisfied the State Board of Insurance that its financial and general condition and its methods of operation, including the issue and sale of variable annuity contracts, are not and will not be hazardous to the public or to its policy and contract owners in this state. No foreign insurance company shall issue, deliver or sell any variable annuity contract in this state unless authorized to do so by the laws of its domicile. In determining the qualifications of a company requesting authority to issue, deliver or use variable annuity contracts pursuant to this article the State Board of Insurance shall consider the history of the company, its financial and general condition, the character, responsibility and general fitness and ability of its officers and directors, and the regulation of a foreign company by the state of its domicile. It is specifically provided that an insurer shall not qualify for authority to issue, deliver, or use variable annuity contracts in this State unless at the time of such issuance, delivery, or use it shall have at least the minimum capital and surplus, or in the case of a mutual insurer, the minimum free surplus, which would at such time be required by law for the incorporation of such a domestic insurer or the licensing in Texas of such a foreign insurer. If after notice and hearing the State Board of Insurance shall find that the company, is qualified to issue, deliver and use variable annuity contracts in accordance with this article and the regulations and rules issued thereunder, it shall issue its official order of authorization, otherwise it shall issue its official order denying such authority and the request therefor and specifying the grounds for such denial.

**Contracts Shall Contain Certain Provisions**

Sec. 3. (a) Every variable annuity contract delivered or issued for delivery in this state, and every certificate evidencing variable benefits issued pursuant to any such contract on a group basis, shall contain a statement of the essential features of the procedure to be followed by the issuing company in determining the dollar amount of the variable annuity benefits or other contractual payments or values thereunder and shall state in clear terms that such amounts may decrease or increase according to such procedure. Every such contract delivered or issued for delivery in this state, and every such certificate, shall contain on its first page, in a prominent position, a clear statement that the benefits or other contractual payments or values thereunder are on a variable basis.

(b) Every individual variable annuity contract delivered or issued for delivery in this state shall stipulate the method of determining the variations in the dollar amount of variable annuity benefits or other contractual payments or values thereunder due to variations in investment experience, and shall guarantee that the expense and mortality results shall not adversely affect such dollar amounts. The first annuity payment to be made pursuant to such method shall not be in an amount in excess of the amount produced by the use of the Progressive Annuity Mortality Table or any other Annuity Mortality Table approved by the State Board of Insurance, and an annual interest assumption of three and one half percent (3½%).

(c) Every individual variable annuity contract delivered or issued for delivery in this state shall contain in substance the following provisions or other provisions more favorable or at least as favorable to the contract owner and approved by the State Board of Insurance:

(i) That, in the event of default in the payment of any consideration beyond the period of grace allowed by the contract for the payment thereof, the company will make payment of the value of the contract, as determined thereunder, in accordance with a plan provided by the contract or agreed upon by the contract owner and the company, such payments to commence not later than the date contractual payments were otherwise to have commenced in accordance with the contract;

(ii) That, upon written request of the contract owner and surrender of the contract the company will make payment of the value of the contract, as determined thereunder, in accordance with a plan provided by the contract and selected by the contract owner or as agreed upon by the contract owner and the company;

(iii) That, the company will mail to the contract owner not less than semiannually after the first contract year a report in a form approved by the State Board of Insurance which shall include a statement of the number of units of

uniform value credited to such contract and the dollar value of each such unit as of a date not more than four (4) months previous to the date of mailing, and a statement in a form and as of a date approved by the State Board of Insurance of the investments held in the segregated portfolio or portfolios of investments or separate account or accounts designated in such contract.

(d) Every group variable annuity contract delivered or issued for delivery in this state shall stipulate the method of determining the variations in the dollar amount payable with respect to a unit of variable annuity benefits purchased thereunder due to variations in investment experience, and shall guarantee that expense and mortality results shall not adversely affect such dollar amounts.

#### Optional Fixed Dollar Benefits and Payments

Sec. 4. Any domestic insurance company issuing variable annuity contracts pursuant to this article may in its discretion, but need not, issue annuity contracts providing a combination of fixed dollar amount and variable dollar amount benefits and for optional lump-sum payment of benefits.

#### Filing and Approval Requirements

Sec. 5. Every variable annuity contract form delivered or issued for delivery in this state, and every certificate form evidencing variable benefits issued pursuant to any such contract on a group basis, and the application, rider and endorsement forms applicable thereto and used in connection therewith, shall be and are hereby expressly made subject to the filing and approval requirements of Article 3.42 of this Insurance Code and any and all amendments thereof.

#### Certain Illustrations Prohibited

Sec. 6. Illustration of benefits payable under any variable annuity contract shall not include or involve projections of past investment experience into the future and shall conform with reasonable regulations promulgated by the State Board of Insurance.

#### Separate Accounts and Operation of Same

Sec. 7. Every insurance company authorized pursuant to this article to issue, deliver or use variable annuity contracts shall, in connection with same, establish one or more separate accounts to be known as separate variable annuity accounts. All amounts received by the company in connection with any such contract which are required by the terms thereof to be allocated or applied to one or more designated separate variable annuity accounts shall be placed in such designated account or accounts. The assets and liabilities of each such separate variable annuity account shall at all times be clearly identifiable and distinguishable from the assets and liabilities in all other accounts of the company. The assets held in any such separate variable annuity account shall not be chargeable with liabilities arising out of any other business the company may conduct but shall be held and applied exclusively for the benefit of the

owners or beneficiaries of the variable annuity contracts applicable thereto. In the event of the insolvency of the company the assets of each such separate variable annuity account shall be applied to the contractual claims of the owners or beneficiaries of the variable annuity contracts applicable thereto. Except as otherwise specifically provided by the contract, no sale, transfer or exchange of assets may be made between any such separate variable annuity account and any other account of the company, and no asset of a separate variable annuity account shall be pledged, transferred or in any manner encumbered as collateral for a loan. All amounts and assets allocated to any such separate variable annuity account shall be owned by the company and with respect to same the company shall not be nor hold itself out to be a trustee.

#### Investment of Separate Account Funds

Sec. 8. Any domestic insurance company which has established one or more separate variable annuity accounts pursuant to this article may invest and reinvest all or any part of the assets allocated to any such account in and only in the securities and investments authorized by Article 3.39 of this Insurance Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by the State Board of Insurance and as to which market quotations have been available. None of the assets allocated to any such variable annuity account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (a) Twenty-Five Thousand Dollars (\$25,000) or (b) five per cent (5%) of the assets of any such separate variable annuity account in any one corporation issuing such common capital stock. The assets and investments of such separate variable annuity accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through a broker, the specific variable annuity account for which the investment is made.

#### Valuation of Assets

Sec. 9. Assets allocated to any separate variable annuity account shall be valued at their market value on the date of any valuation, or if there is no readily available market then in accordance with the terms of the variable annuity contract applicable to such assets, or if there are no such contract terms then in such manner as may be prescribed by reasonable rules and regulations of the State Board of Insurance.

## Reserve Liability

Sec. 10. The reserve liability for variable annuity contracts shall be established by the State Board of Insurance pursuant to the requirements of the Standard Valuation Law as contained in this Insurance Code, and in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

## Separate Annual Statements

Sec. 11. Every insurance company authorized pursuant to this article to issue, deliver or use variable annuity contracts shall annually file with the State Board of Insurance a separate annual statement of its separate variable annuity accounts. Such statement shall be on a form prescribed or approved by the State Board of Insurance and shall include details as to all of the income, disbursements, assets and liability items of and associated with the said separate variable annuity accounts. Said statement shall be under oath of two officers of the company and shall be filed simultaneously with the annual statement required by Article 3.07 and Article 11.06 of this Insurance Code.

## Amendment of Domestic Company Charters

Sec. 12. Every domestic insurance company authorized pursuant to this article to issue variable annuity contracts and establish separate variable annuity accounts may amend its charter to provide for special voting rights and procedures for the owners of its variable annuity contracts to give them jurisdiction over matters relating to investment policies, investment advisory services and the selection of certified public accountants in relation to the administration of the assets in such separate variable annuity accounts, and in order to comply with the Investment Company Act of 1940 of the United States and such other requirements of federal law as shall be applicable to such separate variable annuity accounts.

## Variable Annuity Agents' Licenses

Sec. 13. Notwithstanding any other law of this State, no person shall, within this State, sell or offer for sale a variable annuity contract, or do or perform any act or thing in the sale, negotiation, making or consummating of any variable annuity contract other than for himself unless such person shall have a valid and current certificate from the State Board of Insurance authorizing such person to act within this State as a variable annuity insurance agent. No such certificate shall be issued unless and until the said Board is satisfied, after examination, that such person is by training, knowledge, ability and character qualified to act as such agent. Any such certificate may be withdrawn and cancelled by said Board, after notice and hearing, if it shall find that the holder thereof does not then have the qualifications required for issue of such certificate.

## Issuance of Variable Annuity Contracts by Nonprofit Corporations Not Domiciled in Texas

Sec. 14. An insurance company, including a corporation regulated by the insurance regulatory au-

thority of its state of domicile, which is a nonprofit corporation, is hereby authorized to issue and deliver variable annuity contracts in this State pursuant to a license issued by the State Board of Insurance under such rules and regulations as may be promulgated from time to time by the State Board of Insurance. Any such company not domiciled in Texas must be authorized to issue and deliver variable annuity contracts under the law of its domicile. Variable annuity contracts issued and delivered in this State by such companies shall comply with the preceding and following sections hereof except that such variable annuity contracts may provide for payments which vary directly according to investment, mortality and expense experience. The State Board of Insurance shall pursuant to rules and regulations promulgated by it determine that the expenses of such company are not unfair, unjust, unreasonable or inequitable to the holders of such variable annuity contracts and approve the method of arriving at mortality and expense assumptions and the method of establishing reserve liability. No such company shall be authorized to issue any annuity or insurance contract other than the type of variable annuity contract authorized to be issued and delivered by this Act.

## Rules and Regulations

Sec. 15. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article, and in augmentation thereof.

## Provisions Cumulative and Conflicting Laws Repealed

Sec. 16. This article is cumulative of and in addition to the authority granted by any other law of this State relating to separate accounts for insurance companies or to annuity contracts on a variable basis, and shall not be deemed to repeal or affect the provisions of Part III of Article 3.39 of this Code dealing with the group variable annuity contracts referred to in such article, or to affect such contracts, and all other laws and parts of laws in conflict with this Act are hereby repealed to the extent only of such conflict.

[Acts 1967, 60th Leg., p. 461, ch. 210, § 1, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 465, ch. 210, § 2 provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

## Art. 3.73. Variable Life Insurance or Annuity Contracts

## Segregated Portfolios of Investments

Sec. 1. A domestic life insurance company, stock, mutual, or fraternal, may establish one or more segregated portfolios of investments for the purpose of meeting and complying with requirements arising from issuing individual and group life insurance and

annuity contracts with variable benefits. Such portfolios of investments shall have such identity as is prescribed by the State Board of Insurance and other appropriate authority.

Separate Accounts; Establishment

Sec. 2. Domestic life insurance companies writing variable life insurance contracts may establish one or more separate accounts and create such divisions of any separate accounts as are appropriate to its operation. A segregated portfolio of investments established for the purpose of writing variable insurance or annuity contracts may be used in connection with one or more separate accounts, or it may be accounted for as a part of a separate account.

Allocations to Separate Accounts; Valuation of Assets;  
Ownership; Transfers

Sec. 3. Domestic life insurance companies establishing such separate accounts may allocate thereto amounts (including proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance (and benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(a) The income, gains and losses, realized or unrealized, attributable to a separate account shall be credited to or charged against the account, without regard to the other income, gains or losses of the company.

(b) To the extent of the reserves and other contract liabilities required to be held in the separate account, amounts allocated to any separate account and accumulations thereon may be invested and reinvested in and only in the securities and investments authorized by Parts I and II of Article 3.39 of this Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by and meeting the standards of the State Board of Insurance and as to which reliable market quotations have been available. None of the assets allocated to any such separate account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (i) Twenty-Five Thousand Dollars (\$25,000) or (ii) five per cent (5%) of the assets of any such separate account, or (iii) ten per cent (10%) of the assets of all such separate accounts in securities or common capital stock of any one corporation, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of an open-end investment company or companies reg-

istered under the Federal Investment Company Act of 1940<sup>1</sup>. The assets and investments of such separate accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through a broker, and to the transfer agent, when necessary, the specific separate account for which the investment is made.

(c) Reserves for benefits guaranteed by variable life insurance contracts shall be maintained in either the general account or in a separate account, subject to requirements of the State Board of Insurance.

(d) Unless otherwise approved by or not contrary to regulations of the State Board of Insurance, assets allocated to a separate account shall be valued (1) at their market value on the date of valuation, or if there is no readily available market, (2) as provided under the terms of the contract or the rules or other written agreement applicable to such separate account and (3) in accordance with the rules or regulations prescribed by appropriate authority; provided, that unless otherwise specified by the State Board of Insurance, the portion, if any, of the assets of such separate account in excess of the reserves and other contract liabilities required to be held in the separate account shall be valued in accordance with the rules otherwise applicable to the company's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this Act shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts except under such circumstances as are otherwise provided by this article. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct. In the event of the insolvency of the company the net assets of each separate variable life insurance account shall be applied to the contractual claims of the owners or beneficiaries of the variable life insurance contracts applicable thereto.

(f) (1) All transfers made into or out of a separate account shall be made only as authorized by the provisions of this Act and shall be by a transfer in cash, except as otherwise provided herein.

(2) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its sepa-

rate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the State Board of Insurance. The State Board of Insurance may approve other transfers among such accounts if, in its opinion, such transfers would not be inequitable.

(g) To the extent such company deems it necessary to comply with any applicable federal or State laws, such company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

<sup>1</sup> 15 U.S.C.A. § 80a-1 et seq.

#### Statement of Variable Benefits

Sec. 4. Any life insurance contract providing benefits payable in variable amounts delivered or issued for delivery in this State shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar or unit amount of such variable benefits. Any such life insurance contract under which the benefits vary to reflect investment experience, including a group life insurance contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

#### Qualification of Insurers

Sec. 5. No company shall deliver or issue for delivery within this State variable life insurance contracts unless it is licensed or organized to do a life insurance business in this State, and the State Board of Insurance is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this State. In this connection, the State Board of Insurance shall consider among other things:

(a) The history and financial condition of the company;

(b) The character, responsibility and fitness of the officers and directors of the company; and

(c) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the State Board of Insurance to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

The provisions of this article shall not be construed to prevent a domestic life insurance company from qualifying to do business in another state, and such companies are authorized to do a variable contract business in another state in accordance with the laws of that state, provided that any such business done and any transaction arising therefrom is capable of being identified separately.

No insurer may file a variable life insurance contract for approval by the State Board of Insurance unless it has complied with such advance clearance procedures as may be established by the State Board of Insurance.

#### Rules and Regulations

Sec. 6. Notwithstanding any other provision of law, the State Board of Insurance shall have sole authority to regulate the issuance and sale of variable life insurance contracts, and to issue such reasonable rules and regulations as may be appropriate to regulate and to carry out the purposes and provisions of this Act and in augmentation thereof. The State Board of Insurance may make such provision as is necessary to achieve conformity with federal law.

#### Construction of Act; Exceptions; Grace Provisions; Reserve Liability

Sec. 7. Except for Paragraphs 2, 6, 7, 8, 9, 11, and 12 of Article 3.44, Insurance Code, Article 3.44a, Insurance Code, Paragraph 3 of Article 3.45, Insurance Code, Section 2, Paragraph (1) of Article 3.50, Insurance Code, Article 11.12, Insurance Code, Article 11.13, Insurance Code, and Article 11.14, Insurance Code, and except as otherwise provided in this article, all pertinent provisions of this Code not conflicting with this article shall apply to such separate accounts and contracts relating thereto. The provisions of this article shall be considered and interpreted as being in conjunction with the provisions of Article 3.72 and other applicable statutes except that any conflict or ambiguity arising from such consideration shall be resolved on the basis of provisions in this article. Any individual variable life insurance contract, delivered or issued for delivery in this State, shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this State,

shall contain a grace provision appropriate to such a contract.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality or other contractual guarantees.

Use of Account or Portfolio

Sec. 8. No separate account or segregated portfolio of investments shall be used for both variable life insurance contracts and variable annuity contracts.

Effective Date

Sec. 9. The provisions of this Act shall take effect on September 1, 1971.

[Acts 1971, 62nd Leg., p. 1792, ch. 529, § 1, eff. Sept. 1, 1971.]

Sections 2 and 3 of the 1971 act provided:

"Sec. 2. This Act is cumulative of and in addition to the authority granted by any other law of this State relating to separate accounts for insurance companies and shall not be deemed to repeal any such laws but all other laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER FOUR. TAXES AND FEES

Article

- 4.01. Tax Other Than Premium Tax.
- 4.02. Insurance Companies Other than Life, Other than Fraternal Benefit Associations, and Other than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums.
- 4.03. Tax on Insurance Organizations Not Organized Under Laws of Texas.
- 4.04. Tax on Domestic Insurance Organizations.
- 4.05. Taxes to be Paid before Certificate is Issued.
- 4.06. Taxes Imposed Exclusive.
- 4.07. Fees of State Board of Insurance.
- 4.08. Unclaimed Funds Statute for Life Insurance Companies.
- 4.09. Fees for the Privilege of Writing Credit Life Insurance or Credit Accident and Health Insurance or Both Credit Life Insurance and Credit Accident and Health Insurance.

Art. 4.01. Tax Other Than Premium Tax

All insurance companies incorporated under the laws of this state shall hereafter be required to render for county and municipal taxation all of their real estate and all furniture, fixtures, automobiles, equipment, and data processing systems, as other such real estate and tangible personal property is rendered in the city and county where such property is located.

All other personal property owned by such insurance companies, except fire insurance companies and casualty insurance companies, shall be valued as other such property is valued for assessment by the taxing authority in the following manner:

From the total valuation of the entire assets of each insurance company shall be deducted:

- (a) All the debts of every kind and character owed by such insurance company;

- (b) All intangible personal property owned by such insurance company;

- (c) All reserves, being the amount of the debts of such insurance company by reason of its outstanding policies in gross.

From the remainder shall be deducted the assessed value of all real estate and the assessed value of all furniture, fixtures, automobiles, equipment, and data-processing systems, rendered for taxation, and the remainder, if any there be, shall be taxable as personal property by the city and county where the principal business office of any such company is fixed by its charter.

All other personal property of fire insurance companies and casualty insurance companies incorporated under the laws of this state shall be valued as other such property is valued for assessment by the taxing authority in the following manner:

From the total valuation of the entire assets of each insurance company shall be deducted:

- (a) All the debts of every kind and character owed by such insurance company;

- (b) All intangible personal property owned by such insurance company;

- (c) All reserves, which reserves shall be computed in such manner as may be prescribed by the rules and regulations of the State Board of Insurance, for unearned premiums and for all bona fide outstanding losses.

From the remainder shall be deducted the assessed value of all real estate and the assessed value of all furniture, fixtures, automobiles, equipment, and data-processing systems, rendered for taxation, and the remainder, if any there be, shall be taxable as personal property by the city and county where the principal business office of any company is fixed by its charter.

Domestic insurance companies shall not be required to pay any occupation or gross receipts tax except as otherwise provided by this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1957, 55th Leg., p. 812, ch. 344, § 2; Acts 1969, 61st Leg., p. 2470, ch. 831, § 1, eff. Jan. 1, 1970.]

Sections 2 to 5 of the amendatory act of 1969 provided:

"Sec. 2. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act shall be held by the courts to be invalid, then, in that event, this Act, in its entirety, shall be invalid and of no force and effect and Art. 4.01 of the Insurance Code of Texas, 1951, as amended by Section 3 of Chapter 344, Acts of the 55th Legislature, Regular Session, 1957, shall remain in full force and effect, to the same extent as if this Act had not been enacted.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed.

"Sec. 4. Nothing in this Act shall be construed as amending or in any way changing the provisions, applicability or effect of Article 7166, Texas Civil Statutes.

"Sec. 5. This Act shall take effect on January 1, 1970."

Art. 4.02. Insurance Companies Other than Life, Other than Fraternal Benefit Associations, and Other than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums

Sec. 1. Each such insurance organization shall be subject to the provisions of Articles 7074 to 7078,

inclusive, of the Revised Civil Statutes of 1925, as amended.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 4.03. Tax on Insurance Organizations Not Organized Under Laws of Texas

Sec. 1. This article shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 3.33 of Subchapter C, Chapter 3 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 4.04. Tax on Domestic Insurance Organizations

Sec. 1. This article shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 3.33 of Subchapter C, Chapter 3 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 4.05. Taxes to be Paid before Certificate is Issued

Upon the receipt of sworn statements showing the gross premium receipts of any insurance organization, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization for the preceding year, which taxes shall be paid to the State Treasurer for the use of the State, by such company. Upon his receipt of such certificate and the payment of such tax, the Treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes. No such life insurance company shall receive a certificate of authority to do business in this State until such taxes are paid. If, upon the examination of any company, or in any other manner, the Board shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, it shall be the duty of such Board to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. The State Treasurer if, within fifteen (15) days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, shall report the facts to the Attorney General, who shall immediately institute suit in the proper court in Travis County to recover such taxes.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

2 West's Tex.Stats. & Codes—29

#### Art. 4.06. Taxes Imposed Exclusive

No occupation tax other than herein imposed shall be levied by the State or any county, city or town, upon any insurance organization herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax imposed by this chapter shall be the sole occupation tax which any company doing business in this State under the provisions of this chapter shall be required to pay.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 4.07. Fees of State Board of Insurance

The State Board of Insurance shall charge and receive for the use of the State the following fees:

For filing each declaration or certified copy of charter of an insurance company .....	\$25.00
For filing the annual statement of an insurance company, or certificate in lieu thereof ..	\$20.00
For certificate of authority and certified copy thereof .....	\$ 1.00
For affixing the official seal and certifying to the same .....	\$ 1.00
For valuing policies of life insurance, and for each one million of insurance or fraction thereof .....	\$10.00

The State Board of Insurance shall set and collect a sales charge for making copies of any paper of record in the Department of Insurance, such charge to be in an amount deemed sufficient to reimburse the State for the actual expense; provided, however, that the State Board of Insurance may make and distribute copies of papers containing rating information without charge or for such charge as the Board shall deem appropriate to administer the premium rating laws by properly disseminating such rating information; and provided further that Article 5.29, Texas Insurance Code, shall remain in full force and effect without amendment.

All fees collected by virtue of this Article shall be deposited in the State Treasury and appropriated to the use and benefit of the State Board of Insurance to be used in the payment of salaries and other expenses arising out of and in connection with the examination of insurance companies and/or the licensing of insurance companies and investigations of violations of the insurance laws of this State in such manner as provided in the general appropriation bill. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 1260, ch. 578, § 1, eff. June 17, 1965.]

#### Art. 4.08. Unclaimed Funds Statute for Life Insurance Companies

Title

Sec. 1. This Article shall be known as the "Unclaimed Funds Statute for Life Insurance Companies."

## Scope

Sec. 2. This Article shall apply to unclaimed funds, as defined in Section 3 hereof, of any life insurance company doing business in this state where the last known address, according to the records of such company, of the person entitled to such funds is within this state, provided that if a person other than the insured or annuitant be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this Article that the last known address of the person entitled to such funds is the same as the last known address of the insured or annuitant according to the records of such company.

## Definitions

Sec. 3. The term "unclaimed funds" as used in this Article shall mean and include all monies held and owing by any life insurance company doing business in this state which shall have remained unclaimed and unpaid for seven years or more after it is established from the records of such company that such monies became due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this Article only if such policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Annuities and other obligations, the payment of which is conditioned upon the continued life of any person, shall not be deemed to be "due and payable" in the absence of actual proof that such person was alive at the time or times required by the contract. Monies otherwise admittedly due and payable under any such life or endowment insurance policy or annuity contract shall be deemed to be "held and owing" within the meaning of this Article although the policy or contract shall not have been surrendered as required.

## Reports

Sec. 4. Every such life insurance company shall on or before the first day of May of each year make a report in writing to the State Treasurer of Texas of all unclaimed funds, as hereinbefore defined, held and owing by it on the 31st day of December next preceding, provided, however, such report shall not be required to include amounts of less than Five Dollars (\$5.00) which on the effective date of this Article shall have been unclaimed and unpaid for more than eleven years, or amounts which have been paid to another state or jurisdiction under any escheat or unclaimed funds law thereof. Such report shall be signed and sworn to by an officer of such company and shall set forth:

(1) in alphabetical order the full name of the insured or annuitant, his last known address according to the company's records, and the policy or contract number;

(2) the amount appearing from the company's records to be due on such policy or contract;

(3) the date such unclaimed funds became payable;

(4) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and

(5) such other identifying information as the State Treasurer may require; provided, however, that amounts of less than Ten Dollars (\$10.00) each may be reported in the aggregate without furnishing any of the information required in Clauses (1), (2), (3), (4), and (5) of this Section.

## Notice; Publication

Sec. 5. (a) On or before the first day of September following the making of such reports under Section 4, the State Treasurer shall cause to be published notices based on the information contained in such reports and entitled: "NOTICE OF CERTAIN UNCLAIMED FUNDS HELD AND OWING BY LIFE INSURANCE COMPANIES." Such a notice shall be published once in a newspaper published or having a general circulation in each county of this state in which is located the last known address of a person appearing to be entitled to such funds.

(b) Each such notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts where the last known address of the person appearing to be entitled to such funds is in the county of publication or general circulation, together with: (1) the amount reported due and the date it became payable; (2) the name and last known address of each beneficiary of other person who, according to the company's reports, may have an interest in such unclaimed funds; and (3) the name and address of the company. The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than the following December 20th such unclaimed funds still remaining will be paid to the State Treasurer who shall thereafter be liable for the payment thereof.

(c) It shall not be obligatory upon the State Treasurer to publish any item of less than Fifty Dollars (\$50) in such notice, unless the State Treasurer deems such publication to be in the public interest. The expenses of publication shall be charged against the special trust fund provided for in Section 9.

## Payment to State Treasurer

Sec. 6. All unclaimed funds contained in the report required to be filed by Section 4 of this Article,

excepting those which have ceased to be unclaimed funds, shall be paid over to the State Treasurer on or before the following December 20th.

The State Treasurer shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this Article shall be extended for a like period.

**Custody of Unclaimed Funds in State; Insurers Indemnified**

Sec. 7. Upon the payment of such unclaimed funds to the State Treasurer the state shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the state from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

**Reimbursement for Claims Paid by Insurers**

Sec. 8. (a) Any life insurance company which has paid monies to the State Treasurer pursuant to the provisions of this Article may make payment to any person appearing to such company to be entitled thereto and upon proof of such payment the State Treasurer shall forthwith reimburse such company for such payment.

(b) In the event legal proceedings are instituted by any other state, in this state or in any other state or federal court with respect to any of the unclaimed funds paid to the State Treasurer, the life insurance company making the payment shall notify the State Treasurer and the Attorney General of this state of such proceedings and the Attorney General may, in his discretion, intervene therein. If after the life insurance company making the payment has actively defended in such proceedings, or has been notified in writing by the Attorney General that no defense need be made in respect to such funds, a judgment is entered against such life insurance company for any amount paid to the State Treasurer under this Article (including any increment to the amount so paid resulting from the differential in time at which payments are made to this state and the other state involved), the State Treasurer shall, upon being furnished proof of payment in satisfaction of said judgment, immediately reimburse the life insurance company the amount so paid in satisfaction of the judgment. The State Treasurer shall also immediately reimburse the life insurance company for any legal fees, costs and other expenses incurred in such legal proceedings.

(c) If, as to any claim for reimbursement made under this Section 8, the State Treasurer shall fail to make reimbursement within ninety days after the making of such claim, or if he shall notify the life

insurance company prior to the expiration of the ninety days of his refusal to make reimbursement, the life insurance company making such claim for reimbursement may institute suit therefor in a court of competent jurisdiction in Travis County, Texas, naming the State Treasurer as defendant, and such court shall have jurisdiction of any such action to recover any amount for which the right to reimbursement is herein provided. Any action hereunder must be brought within one hundred eighty days after the making of a claim for reimbursement against the State Treasurer.

(d) The rights to reimbursement set forth in, and provided by, this Section shall be the obligation of the State of Texas and any amounts recoverable under this Section 8, whether or not due under any judgment against the State Treasurer, shall be paid from the special trust fund established by this Act, or if the special trust fund is insufficient from the general funds of the State of Texas.

**Special Trust Fund; Administration**

Sec. 9. Upon receipt of any unclaimed funds from such life insurance companies by the State Treasurer, he shall pay forthwith three-fourths of the amount thereof into the general funds of the state for the use of the state. The remaining one-fourth shall be administered by him as a special trust fund for the purposes of this Article, and deposited in the manner provided by law for the deposit of said funds. At the end of each calendar year, any unclaimed funds which shall have been a part of such special trust fund for a period of seven years or more shall be paid into the general funds of the state for the use of the state, provided that the special trust fund shall never be so reduced to less than One Hundred Thousand Dollars (\$100,000.00).

**Determination and Review of Claims**

Sec. 10. Any person claiming to be entitled to unclaimed funds paid to the State Treasurer may file a claim at any time with such official. The State Treasurer shall possess full and complete authority to accept or reject any such claim. If he rejects such claim or fails to act thereon within ninety days after receipt of such claim, the claimant may institute suit therefor in a court of competent jurisdiction naming the State Treasurer as defendant.

**Payment of Allowed Claims**

Sec. 11. Any claim which is accepted by the State Treasurer or ordered to be paid by him by a court of competent jurisdiction shall be paid out of the special trust fund in his custody, or in the event such special trust fund shall be insufficient, out of the general funds of the state.

**Records Required**

Sec. 12. The State Treasurer shall keep in his office a public record of each payment of unclaimed funds received by him from any life insurance company. Except as to amounts reported in the aggre-

gate, such record shall show in alphabetical order the name and last known address of each insured or annuitant, and of each beneficiary or other person who, according to the company's reports, may have an interest in such unclaimed funds, and with respect to each policy or contract, its number, the name of the company, and the amount due.

Other Acts Not Applicable

Sec. 13. No other Statute of this state relating to escheat or unclaimed funds now in force shall apply to life insurance companies, nor shall any such Statute hereafter enacted so apply unless specifically made applicable by its terms; provided that Article 3272a, House Bill No. 5, Acts of the 57th Legislature, First Called Session, shall be in force as to personal property subject to escheat reported or required to be reported by January 6, 1962, under the terms of said Act and the provisions of Section 8 hereof shall be applicable in such cases.

Penalty

Sec. 14. Any person who wilfully fails to file a report required by this Article, or who violates any of the other terms and provisions of this Article shall be punished by a fine not less than Five Hundred Dollars (\$500.00), nor more than One Thousand Dollars (\$1000.00), or by confinement for not more than six months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars (\$100.00) for each day of such wilful failure or refusal, said civil penalties to be collected by suit in a District Court of Travis County, Texas, by the Attorney General in the name of the State of Texas.  
[Acts 1963, 58th Leg., p. 865, ch. 333, § 1.]

**Art. 4.09. Fees for the Privilege of Writing Credit Life Insurance or Credit Accident and Health Insurance or Both Credit Life Insurance and Credit Accident and Health Insurance**

Sec. 1. The State of Texas shall assess and collect from each credit insurer writing in Texas credit life insurance or credit accident and health insurance or both credit life insurance and credit accident and health insurance, as defined in Article 3.53 of the Insurance Code, an annual fee for such privilege of Five Hundred Dollars (\$500), which shall be independent of and in addition to all other fees and taxes now imposed, or which may hereafter be imposed by law. Such fee shall be for the privilege of doing business from January 1 through December 31, and shall be due and payable at the time the insurer first engages during each calendar year in the writing of such credit insurance. The fee shall be for the privilege of writing such credit insurance for the remainder of the calendar year in which the fee becomes payable, and the amount of the fee shall not be reduced even though the privilege does not cover a full calendar year.

Sec. 2. All fees collected by virtue of this Article shall be deposited in the State Treasury and appropriated to the use and benefit of the State Board of Insurance to be used in the payment of salaries and other expenses arising out of and in connection with the examination of insurance companies and/or the licensing of insurance companies and investigations of violations of the insurance laws of this State.  
[Acts 1965, 59th Leg., p. 1035, ch. 512, § 1, eff. June 16, 1965.]

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**SUBCHAPTER A. MOTOR VEHICLE OR  
AUTOMOBILE INSURANCE**

**Art. 5.01. Fixing Rate of Automobile Insurance**

Every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's or other insurer, hereinafter called insurer, writing any form of motor vehicle insurance in this State, shall annually file with the Board of Insurance Commissioners, hereinafter called Board, on forms prescribed by the Board, a report showing its

premiums and losses on each classification of motor vehicle risks written in this State.

The Board shall have the sole and exclusive power and authority, and it shall be its duty to determine, fix, prescribe, and promulgate just, reasonable and adequate rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this State, including fleet or other rating plans designed to discourage losses from fire and theft and similar hazards and any rating plans designed to encourage the prevention of accidents. In promulgating any such rating plans the Board shall give due consideration to the peculiar hazards and experience of individual risks, past and prospective, within and outside the State and to all other relevant factors, within and outside the State. The Board shall have the authority also to alter or amend any and all of such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same or any part thereof.

Said Board shall have authority to employ clerical help, inspectors, experts, and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law; provided, however, that the number of employees and salary of each shall be fixed in the General Appropriation Bill passed by the Legislature. The Board shall ascertain as soon as practicable the annual insurance losses incurred under all policies on motor vehicles in this State, make and maintain a record thereof, and collect such data as will enable said Board to classify the various motor vehicles of the State according to the risk and usage made thereof, and to classify and assign the losses according to the various classes of risks to which they are applicable; the Board shall also ascertain the amount of premiums on all such policies for each class of risks, and maintain a permanent record thereof in such manner as will aid in determining just, reasonable and adequate rates of premiums.

Motor vehicle or automobile insurance as referred to in this subchapter shall be taken and construed to mean every form of insurance on any automobile or other vehicle hereinafter enumerated and its operating equipment or necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motorbicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running only upon fixed rails or tracks. Workmen's Compensation Insurance is excluded from the foregoing definition.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 2.]

**Art. 5.02. Authority to Assign Certain Types or Classes to Appropriate Rating Laws**

There shall be excluded from regulation under the provisions of this subchapter any insurance against

liability for damages arising out of the ownership, operation, maintenance or use of or against loss of or damage to motor vehicles described in the foregoing section which may, in the judgment of the Board, be a type or class of insurance which is also the subject of or may be more properly regulated under the terms or provisions of other insurance rating laws heretofore or hereafter enacted covering such insurance. If such situation shall be found to exist, then the Board shall make an order declaring which of the said rating laws shall be applicable to such type or class of insurance, and to any motor vehicle equipment mentioned in Article 5.01 of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.03. Promulgated Rates as Controlling

(a) On and after the filing and effective date of such classification of such risks and rates, no such insurer, except as otherwise provided herein, shall issue or renew any such insurance at premium rates which are greater or lesser than those promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of this Article. Any insurer desiring to write insurance at rates different from those promulgated by the Board shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser or greater rate, on a statewide basis unless otherwise ordered by the Board, from the class rates or classes of rates promulgated by the Board. Any insurer desiring to write insurance under a classification plan different from that promulgated by the Board shall make written application to the Board for permission to do so; provided, however, the Board shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications which, when combined, will enable consideration of the insurer's experience under both the Board classification plan and its own classification plan. Such application shall be approved in whole or in part by the Board, provided the Board finds that the resulting premiums will be just, adequate, reasonable, not excessive and not unfairly discriminatory, taking into consideration the following:

- (1) the financial condition of the insurer;
- (2) the method of operation and expenses of such insurer;
- (3) the actual paid and incurred loss experience of the insurer;
- (4) earnings of the insurer from investments together with a projection of prospective earnings from investments during the period for which the application is made; and
- (5) such application meets the reasonable conditions, limitations, and restrictions deemed necessary by the Board.

In considering all matters set forth in such application the Board shall give consideration to the composite effect of items (2), (3), and (4) above and the Board shall deny such application if it finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory. Provided, however, that no application for a deviation for a greater rate shall be approved by the Board unless such plan of deviation provides that all insureds or persons authorized to act in relation to the risk to be insured shall acknowledge in writing his receipt of notice of and his consent to such greater rate, except that the plan of deviation may provide that the acknowledgement in writing of the receipt of notice of and consent to such greater rate be limited to the insured's original application to a company for a policy of insurance issued for a greater rate, if the initial policy, and all renewals thereof, have stamped on the face of such policies the following language: "The premium charged for this policy is greater than the premium rates promulgated by the State Board of Insurance." The stamped provision shall be in letters no smaller than 14 point boldface type. The written consent shall be kept by the insurer and be available for inspection by the Board.

Except as the Board may authorize, the deviation provisions in this Article shall not apply to insurance written pursuant to other provisions of this Chapter in which a deviation from standard rates is authorized, including, but not limited to, automobile liability experience rating and fleet rating plans.

(b) The Board shall issue its order in writing setting forth the terms of approval or reasons for denial of each application filed for deviation. On January 1, 1974 and thereafter if the Board has not issued its order within 30 days after the filing of an application, the application shall be "deemed approved" by the Board. Provided, however, that the Board may thereafter require the applicant insurer to furnish proof to the Board that the matters set out in the application are true and correct and that such application meets the requirements of this Article. If after notice and hearing the Board determines that any application "deemed to have been approved" by the Board contains false or erroneous information or the Board determines that the application does not meet the requirements of this Article the Board may suspend or revoke the approval "deemed to have been granted."

An insurer that has received approval, or is "deemed to have received approval" for the use of a deviation may apply for an amendment to such deviation or by notice to the Board withdraw the deviation.

(c) From and after the effective date of an application approved by the Board, or "deemed to have been approved" by the Board, such insurer may write insurance in accordance with such approval. Provided, however, that the right to write insurance at a lesser or greater rate as approved may be suspended or revoked by the Board, after notice and hearing, if upon examination or at any time it

appears to or is the opinion of the Board that such insurer:

- (1) has had a change in its financial condition since the granting of the application; or
- (2) the actual paid and incurred losses of the insurer have materially changed since the granting of the application; or
- (3) there has been a material increase in expenses of such insurer since the granting of the application; or
- (4) there has been a material reduction in earnings from investments by the insurer since the granting of the application; or
- (5) the insurer has failed or refused to furnish information required by the Board; or
- (6) the insurer has failed to abide by or follow its rate deviation previously approved by the Board. The Board may suspend the right of an insurer to write insurance at the rates approved under such application, pending hearing, provided that the Board in or accompanying the order suspending such right, sets such hearing within not less than 10 nor more than 30 days following the issuance of its order. The Board shall conduct the hearing within not less than 10 nor more than 30 days following the issuance of its order suspending such right, unless the insurer subject to the order requests the Board to delay the hearing beyond 30 days. The right to write insurance at the lesser or greater rate previously approved by the Board shall automatically terminate, except as herein provided, upon the promulgation by the Board of new or different rates as provided for in the first sentence of "Section (a)" of this Article, and as further provided in paragraphs one and two of Article 5.01, Insurance Code, as amended. After the effective date of the Board's promulgation or authorization of new or different rates, the insurer may not thereafter write insurance at a lesser or greater rate, except that an insurer may continue to write insurance at a deviated rate by applying the percentage of the previously approved deviation applicable to the prior rates as the percentage of deviation applicable to the new or different rates promulgated by the Board, limited, however, to a period of 60 days after the effective date of the new or different rates, and not thereafter, and only if such insurer within 30 days following promulgation by the Board of new or different rates, shall make a written application to the Board for permission to deviate from the new or different rates promulgated by the Board. The Board by order may extend the use of prior approved deviations beyond the 60 day period hereinabove set out.

(d) It is expressly provided, however, that notwithstanding any other provision of this chapter to the contrary, a rate or premium for such insurance greater than the standard rate or premium that has

been promulgated by the Board may be used on any specific risk if:

- (1) a written application is made to the Board naming the insurer and stating the coverage and rate proposed;
- (2) the person to be insured or person authorized to act in relation to the risk to be insured consents to such rate;
- (3) the reasons for requiring such greater rate or premium are stated in or attached to the application;
- (4) the person to be insured or person authorized to act for such person signs the application; and
- (5) the Board approves the application by order or by stamping.

(e) In the administration of this Act the Board shall resolve by rules and regulations, to the extent permitted by law, any conflicts or ambiguities as may be necessary to accomplish the purposes of this Act.

(f) This Article, as amended, is effective September 1, 1973.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1971, 62nd Leg., p. 864, ch. 104, § 1, eff. April 30, 1971; Acts 1973, 63rd Leg., p. 1118, ch. 425, § 1, eff. Sept. 1, 1973.]

Sections 2 and 3 of the act of 1971 provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

#### Art. 5.04. Experience as Factor

To insure the adequacy and reasonableness of rates the Board may take into consideration past and prospective experience, within and outside the State, and all other relevant factors, within and outside the State, gathered from a territory sufficiently broad to include the varying conditions of the risks involved and the hazards and liabilities assumed, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable and adequate, and to that end the Board may consult any rate making organization or association that may now or hereafter exist.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 3.]

#### Art. 5.05. Reports on Experience

(a) Recording and Reporting of Loss Experience and Other Data.

The Board shall, after due consideration, promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rates comply with the standards set forth in Article

5.04. In promulgating such rules and plans, the Board shall have due regard for the rates approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data.

Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with other States.

In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(d) The Commissioner is hereby authorized and empowered to require sworn statements from any insurer affected by this Act, showing its experience on any classification or classifications of risks and such other information which may be necessary or helpful in determining proper classification and rates or other duties or authority imposed by law. The Commissioner shall prescribe the necessary forms for such statements and reports, having due regard to the rules, methods and forms in use in other states for similar purposes in order that uniformity of statistics may not be disturbed.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 4.]

### Art. 5.06. Policy Forms and Endorsements

In addition to the duty of approving classifications and rates, the Board shall prescribe policy forms for each kind of insurance uniform in all respects except as necessitated by the different plans on which the various kinds of insurers operate, and no insurer shall thereafter use any other form in writing automobile insurance in this State; provided, however, that any insurer may use any form of endorsement appropriate to its plan of operation, provided such endorsement shall be first submitted to and approved by the Board; and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this subchapter, and shall be sufficient cause for revocation of license of such insurer to write automobile insurance within this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### Art. 5.06-1. Uninsured Motorist Coverage Required; Insolvency Protection; Right of Rejection

(1) No automobile liability insurance (including insurance issued pursuant to an Assigned Risk Plan established under authority of Section 35 of the

Texas Motor Vehicle Safety-Responsibility Act),<sup>1</sup> covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, in the limits described in the Texas Motor Vehicle Safety-Responsibility Act, under provisions prescribed by the Board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. The coverage required under this Article shall not be applicable where any insured named in the policy shall reject the coverage; and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. The State Board of Insurance is hereby authorized to promulgate the forms of the uninsured motorist coverage. The Board may also, in such forms, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured.

(3) In the event of payment to any person under the coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury, sickness or disease, or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, whenever an insurer shall make payment under a policy of insurance issued pursuant to this Act, which payment is occasioned by the insolvency of an insurer, the insured of said insolvent insurer shall be given credit in any judgment obtained against him, with respect to his legal liability for such damages, to the extent of such payment, but such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had if the insured of the insolvent insurer had made the payment.

[Acts 1967, 60th Leg., p. 448, ch. 202, § 1, eff. Oct. 1, 1967.]

<sup>1</sup> Civil Statutes, art. 6701h, § 35.

**Art. 5.06-2. Garage Insurance**

(1) Definitions. As used in this Act:

(a) "Garage Insurance" means motor vehicle or automobile insurance as defined in Article 5.01 hereof issued to a named insured engaged in the business of selling, servicing or repairing motor vehicles as now or hereafter defined by rules, regulations or orders of the State Board of Insurance;

(b) "Garage Customer" means any person or organization other than the named insured, or an employee, director, officer, stockholder, partner, or agent of the named insured; or a resident of the same household as the named insured, such employee, director, officer, stockholder, partner, or agent;

(c) "Financial Responsibility Limits" means the minimum limits specified by the Texas Motor Vehicle Safety-Responsibility Act.

(2) A policy of garage insurance may contain a provision to the effect that garage customers are not insureds under the garage insurance policy and that the garage insurance shall not apply to garage customers, except to the extent that other valid and collectible insurance, if any, available to the garage customer is not equal to the financial responsibility limits. Notwithstanding any provision to the contrary in such other policy or policies of insurance as to whether such insurance is primary, excess, or contingent insurance, or otherwise, such other valid and collectible insurance shall be primary insurance as to the garage customer. Any garage insurance policy containing such a provision shall not cover garage customers except to such extent, notwithstanding the terms and provisions of such other policy or policies of insurance.

(3) This Act shall apply only to insurance policies issued or renewed or made subject to this Act by endorsement after the effective date hereof.

[Acts 1969, 61st Leg., 2nd C.S., p. 193, ch. 35, § 1, eff. Sept. 19, 1969.]

**Art. 5.06-3. Personal Injury Protection Coverage**

(a) No automobile liability insurance policy, including insurance issued pursuant to an assigned risk plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act,<sup>1</sup> covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless personal injury protection coverage is provided therein or supplemental thereto. The coverage provided in this article shall be applicable unless the insured named in the policy rejects the coverage in writing, and the coverage shall be provided in or supplemental to a renewal policy unless it is rejected in writing by the insured named in the policy.

(b) "Personal injury protection" consists of provisions of a motor vehicle liability policy which provide for payment to the named insured in the motor vehicle liability policy and members of the insured's household, any authorized operator or passenger of

the named insured's motor vehicle including a guest occupant, up to an amount of \$2,500 for each such person for payment of all reasonable expenses arising from the accident and incurred within three years from the date thereof for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services, and in the case of an income producer, payment of benefits for loss of income as the result of the accident; and where the person injured in the accident was not an income or wage producer at the time of the accident, payments of benefits must be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household. The insurer providing loss of income benefits may require, as a condition of receiving such benefits, that the insured person furnish the insurer reasonable medical proof of his injury causing loss of income. The personal injury protection in this paragraph specified shall not exceed \$2,500 for all benefits, in the aggregate, for each person.

(c) The benefits required by this Act shall be payable without regard to the fault or non-fault of the named insured or the recipient in causing or contributing to the accident, and without regard to any collateral source of medical, hospital, or wage continuation benefits. An insurer paying benefits pursuant to this Act shall have no right of subrogation and no claim against any other person or insurer to recover any such benefits by reason of the alleged fault of such other person in causing or contributing to the accident.

(d) All payments of benefits prescribed under this Act shall be made periodically as the claims therefor arise and within thirty (30) days after satisfactory proof thereof is received by the insurer subject to the following limitations:

(1) The coverage described in this Act may prescribe a period of not less than six months after the date of accident within which the original proof of loss with respect to a claim for benefits must be presented to the insurer.

(2) The coverage described in this Act may provide that in any instance where a lapse occurs in the period of total disability or in the medical treatment of an injured person who has received benefits under such coverage and such person subsequently claims additional benefits based upon an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of such alleged recurrence; provided, that in no event shall the aggregate benefits payable to any person exceed the maximum limits prescribed in the policy.

(3) In the event the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to

recover the same; and, in the event the insurer is required to pay such benefits, the person entitled to such benefits shall be entitled to recover reasonable attorneys fees plus 12% penalty, plus interest thereon at the legal rate from the date such sums became overdue.

(e) An insurer shall exclude benefits to any insured, or his personal representative, under a policy required by Section 1, when the insured's conduct contributed to the injury he sustained in any of the following ways:

(1) Causing injury to himself intentionally.

(2) While in the commission of a felony, or while seeking to elude lawful apprehension or arrest by a law enforcement official.

(f) The State Board of Insurance is hereby authorized to prescribe the form, or forms, of insurance policies, including riders and endorsements, to provide the coverage described in this article. The Board shall also prescribe the premium rates under the provisions of this Subchapter A, Chapter 5, Texas Insurance Code. Provided, however, the foregoing provisions relative to forms and rates shall apply only to coverage written to comply with this article; such provisions shall not apply to other accident or health policies even though they promise indemnity against automobile-connected injuries. Provided further, County Mutual Insurance Companies shall not be subject to the rate making authority herein conferred on the board.

(g) Nothing contained in this Act shall affect the offering of medical payments coverage, disability benefits, and accidental death benefits, as presently prescribed by the State Board of Insurance; and nothing contained in this Act shall be construed to prevent an insurer from providing broader benefits than the minimum benefits enumerated in this Act subject to the rules and forms prescribed by the State Board of Insurance.

(h) When any liability claim is made by any guest or passenger described in paragraph (b) hereof against the owner or operator of the motor vehicle in which he was riding or the owner's or operator's liability insurance carrier, the owner or operator of such motor vehicle or his liability insurance carrier shall be entitled to an offset, credit or deduction against any award made to such guest or passenger in an amount of money equal to the amounts paid by the owner, operator or his automobile liability insurance carrier under "personal injury protection" as defined in this Act to such guests or passengers; provided, however, that nothing herein shall be construed to authorize a direct action against a liability insurance company if such right does not presently exist at law.

[Acts 1973, 63rd Leg., p. 90, ch. 52, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Civil Statutes, art. 6701h, § 35.

Section 2 of the 1973 Act provided: "If any portion of this Act, any part thereof, any paragraph, sentence, or other part shall be declared illegal or unconstitutional for any reason, such declaration shall not affect the validity of the remaining portions hereof; and in that connection the legislature hereby specifically declares that all portions hereof shall be severable and that the remaining portions hereof would have been enacted notwithstanding the absence of any such portion as may be declared illegal and unconstitutional."

#### Art. 5.07. Participating Policies

Nothing in this subchapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or interinsurance exchange or Lloyd's association or to prohibit any stock company, mutual company, reciprocal or interinsurance exchange or Lloyd's association issuing participating policies; provided no distribution of profit or dividends to insured shall take effect or be paid until the same shall have been approved by the Board; and provided further that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.08. Special Favors and Profit Sharing

It shall be unlawful for any insurer, as defined in this subchapter, or its officers, directors, general agent, state agents, special agents, local agents or other representatives, to grant to or contract with insured for any special favor or advantage in dividends or other profits, or any commissions or dividends of commissions or profits to accrue thereon, or any compensation or any valuable consideration not specified in the policy contract, or any inducement not specified in the policy contract, for the purpose of writing the insurance of any insured. Nothing in this article, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policyholders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of an equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Board. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract. Any violation of the terms of this section shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.09. Discriminations or Distinctions

No insurer coming within the terms of this subchapter shall, in its business in this State, make or permit any distinction or discrimination in favor of the insured having a like hazard, in the matter of the charge of premiums for insurance, or in dividends or other benefits payable under any policy, nor shall any such insurer or agent make any contract of insurance, or agreement as to such insurance, other than expressed in the policy, nor shall

any such insurer or its agents or representatives pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insured, any rebate payable upon the policy or any special favor or advantage in dividends or other benefits to accrue, or anything of value whatsoever, not specified in the policy; provided that nothing in this subchapter shall be construed to prohibit the modification of rates by rating plans designed to encourage the prevention of accidents, and to take account of the peculiar hazards and experience of individual risks, past and prospective, within and outside the State, and of all other relevant factors, within and outside the State, provided such plan shall have been approved by the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 5.]

#### Art. 5.10. Rules and Regulations

The Board is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this subchapter as are necessary to carry out its provisions, including full power and control over any administrative agencies and/or stamping office which may be organized or established by insurer with the Board's approval to carry into effect the provisions of this subchapter. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.11. Hearing on Grievances

Any policyholder or insurer shall have the right to a hearing before the Board on any grievance occasioned by the approval or disapproval by the Board of any classification, rate, rating plan, endorsement or policy form, or any rule or regulation established under the terms hereof, such hearing to be held in conformity with rules prescribed by the Board. Upon receipt of request that such hearing is desired, the Board shall forthwith set a date for the hearing, at the same time notifying all interested parties in writing of the place and date thereof, which date, unless otherwise agreed to by the parties at interest, shall not be less than ten (10) nor more than thirty (30) days after the date of said notice. Any party aggrieved shall have the right to apply to any court of competent jurisdiction to obtain redress.

No hearing shall suspend the operation of any classification, rate, rating plan or policy form unless the Board shall so order.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 6.]

#### Art. 5.12. Tax on Gross Motor Vehicle Insurance Premiums

The State of Texas shall assess and collect an additional one-fifth ( $\frac{1}{5}$ ) of one (1%) per cent of the gross motor vehicle insurance premiums, of all insurers writing motor vehicle insurance in this State, according to the reports made to the Board of Insurance Commissioners as required by law. The tax herein required shall supersede the tax heretofore collected upon fire premiums of automobile insurance for the support of the Board of Insurance

Commissioners. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Motor Vehicle Insurance Division Fund, to be used for the sole purpose of administering this subchapter; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board of Insurance Commissioners, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this section of this subchapter. Should there be an unexpended balance at the end of any year in said fund, the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the Motor Vehicle Division of the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.12-1. Penalty for Violation of Act

Any insurer or officer or representative thereof which shall violate any provision of this Act<sup>1</sup> shall be subject to a revocation of his or its license by the Board of Insurance Commissioners and in addition shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each such offense.

[Acts 1927, 40th Leg., p. 373, ch. 253, § 12; Acts 1937, 45th Leg., p. 671, ch. 335, § 3.]

<sup>1</sup> Formerly Civil Statutes, art. 4682b (now arts. 5.01 to 5.12).

### SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

#### Art. 5.13. Scope of Sub-chapter

This Sub-chapter applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire Sub-chapter shall ever be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 16 and 17 of this Code.

This Sub-chapter applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as herein stated.

This Sub-chapter does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion,

military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workmen's compensation, inland marine, ocean marine, marine, or title insurance; nor does this Sub-chapter apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

This Sub-chapter shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

The regulatory power herein conferred is vested in the Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 359, ch. 76, § 1.]

#### Art. 5.14. Making of Rates

All rates shall be made in accordance with the following provisions:

1. Due consideration shall be given to the past and prospective loss experience within and outside the State, to catastrophe hazards, if any, to expenses of operation, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the State.

2. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in such risks on the basis of any or all of the factors mentioned in the preceding paragraph.

3. Rates shall be reasonable, adequate, not unfairly discriminatory, and non-confiscatory as to any class of insurer.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.15. Filing of Rates and Rating Information; Approval

(a) Every insurer shall file with the Board every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing

shall indicate the character and extent of the coverage contemplated and shall be accompanied by the policies and endorsement forms proposed to be used, and the information upon which the insurer supports the filing.

(b) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the Board to accept such filings on its behalf.

(c) Any filing made pursuant to this article shall be approved by the Board unless it finds that such filing does not meet the requirements of this sub-chapter. As soon as reasonably possible after the filing has been made the Board shall in writing approve or disapprove the same; provided, that any filing shall be deemed approved unless disapproved within thirty (30) days; provided, that the Board may by official order postpone action for such further time not exceeding thirty (30) days as it deems necessary for proper consideration.

(d) Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval.

(e) If at any time the Board finds that a filing so approved no longer meets the requirements of this subchapter, it may, after a hearing held on not less than twenty days' notice specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this subchapter and shall be effective not less than thirty (30) days after its issuance. Copies of such order shall be sent to every such insurer and rating organization.

(f) Any person or organization aggrieved by the action of the Board with respect to any filing may, within thirty (30) days after such action, make written request to the Board for a hearing thereon. The Board shall hear such aggrieved party within thirty (30) days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within thirty (30) days after such hearings the Board shall affirm, reverse or modify its previous action. Pending such hearing and decision thereon the Board may suspend or postpone the effective date of its previous action.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.16. Rating Organizations

(a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside the State, may make application for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its

by-laws and rules governing the conduct of its business; (2) a list of its members and subscribers; (3) the name and address of a resident of the State upon whom notices or orders of the Board affecting such rating organizations may be served and (4) a statement of its qualification as a rating organization. If the Board finds that the applicant is qualified, it shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the Board within sixty (60) days of the date of its filing with it. Licenses issued pursuant to this Article shall remain in effect until suspended or revoked by the Board. The fee for said license shall be Twenty-five (\$25.00) Dollars.

A rating organization shall not be granted a license as to any class of insurance unless and until two or more insurers have designated it to act for them as to such class of insurance in the manner prescribed herein.

(b) Each rating organization shall, subject to reasonable rules and regulations, permit any insurer, not a member, to become a subscriber to its rating services, and shall furnish such services without discrimination to its members and subscribers. The refusal of any rating organization to admit an insurer as a subscriber shall, at the request of such insurer, be reviewed by the Board at a hearing held upon at least ten (10) days' written notice to such rating organization and such insurer. Every rating organization shall notify the Board promptly of every change in the list of its members and subscribers.

(c) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends to policyholders.

(d) The Board shall, at least once in five (5) years, make or cause to be made an examination of each rating organization licensed in this State. The reasonable costs of such examination shall be paid by the rating organization examined upon presentation to it of a detailed account of such cost. The officers, managers, agents and employees of such rating organization may be examined under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The Board may waive such examination upon proof that such rating organization has, within a reasonably recent period, been examined by the insurance supervisory official of another state, pursuant to the laws of such state, and upon the filing with the Board of a copy of the report of such examination. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.17. Appeal by Minority

Any member of or subscriber to a rating organization may appeal to the Board from the decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization; and the Board shall, after a hearing held on not less than ten (10) days' written

notice to the appellant and to such rating organization, issue an order approving the decision of such rating organization or directing it to give further consideration to such proposal.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.18. Information to be Furnished Insureds; Hearings and Appeals of Insureds

Every insurer which files its own rates and every rating organization shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charges as it may make, furnish to any person then or thereafter affected by such rate or any modification thereof properly made, or to the authorized representative of such person, all information pertinent thereto.

Every insurer which files its own rates and every rating organization shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. Any party affected by the action of such rating organization or such insurer on such request may, within ten (10) days after written notice of such action, appeal to the Board. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.19. Rate Administration

(a) Recording and Reporting of Loss Experience and Other Data.—The Board shall, after due consideration, promulgate reasonable rules and statistical plans which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rating plans comply with the standards set forth in Article 5.14 of this subchapter. In promulgating such rules and plans, the Board shall have due regard for the rating plans approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data.—Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with Other States.—In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and

cooperate with them with respect to rate making and the application of rating systems.

(d) Rules and Regulations.—The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.20. Rebates Prohibited

No insurer or employee thereof, and no broker or agent shall knowingly issue any policy of insurance nor charge, demand or receive a premium thereon except in accordance with the applicable filing which has been approved by the Board. No insurer or employee thereof, and no broker or agent shall pay, allow or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in such applicable filing. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatements, or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing in this article, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policyholders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of the equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Board. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract, provided no distribution of profits or dividends to insured shall take effect or be paid until the same shall have been approved by the Board; and provided further, that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this subchapter. Any violation of the terms of this article shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating; provided further, that nothing in this subchapter shall be construed to prohibit the modification of rates by any rating plan approved by the Board as hereinbefore provided.

As used in this article the word "insurance" includes suretyship, and the word "policy" includes bond.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.21. False or Misleading Information

No person or organization shall knowingly give false or misleading information to the Board, to any insurer, or to any rating organization, which will in any manner affect the proper determination of rates or premiums.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.22. Penalties

The Board may suspend the license of any rating organization or insurer which fails to comply with an order of the Board within the time limited by such order, or any extension thereof which the Board may grant. The Board shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Board may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by it, unless it modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded or reversed.

No license shall be suspended except upon a written order of the Board, stating its findings, made after a hearing held upon not less than ten (10) days' notice to such person or organization specifying the alleged violation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.23. Judicial Review

Any order or decision of the Board shall be subject to review, which shall be on the basis of the record of the proceedings before the Board and shall not be limited to questions of law, by direct action in the District Court of Travis County, instituted by any party aggrieved by any action taken under this subchapter.

Pending final disposition of any proceedings which attack the correctness of a rate, any insurer affected by such order may continue to charge the rate which obtained prior to such order of decrease or may charge the rate resulting from such order of increase, on condition that the difference in the premiums be deposited in a special account by said insurer, to be held in trust by said insurer, and to be retained by said insurer or paid to the holders of policies issued after the order of the Board, as the court may determine.

In all other cases, the court shall determine whether the filing of the appeal shall operate as a stay. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the Board in whole or in part.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.24. Maintenance Tax**

The State of Texas shall assess and collect not exceeding an additional two-fifths ( $\frac{2}{5}$ ) of one (1%) per cent of the gross premiums on all classes of insurance covered by this subchapter, of all insurers writing such insurance in this state, according to the reports made to the Board of Insurance Commissioners as required by law. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Casualty Insurance Fund, which fund shall be kept separate and apart from all other funds and moneys in his hands, to be used for the sole purpose of administering this subchapter; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board of Insurance Commissioners, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this article of this subchapter. Should there be an unexpended balance at the end of any year in said fund, the Board shall reduce the assessment for the succeeding year so that the amount produced and paid into the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the division of the Board of Insurance Commissioners administering this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES**

**Art. 5.25. Board Shall Fix Rates**

The Board of Insurance Commissioners shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Board shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Board shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Such expenses, including the salaries of the members of the Board, shall not exceed in the aggregate, for any fiscal year, the sum of One Hundred and Thirty Thousand (\$130,000.00) Dollars. Said Board shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Board to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or subdivisions of the State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.25-1. Reserved for future legislation****Art. 5.25-2. City Fire Loss Lists**

Sec. 1. In this article,

(1) "list" means the list of fire and lightning losses in excess of \$100 paid under the Texas Standard Policy in a particular city or town prepared by the State Board of Insurance for distribution to the city or town;

(2) "board" means the State Board of Insurance.

Sec. 2. (a) The board shall compile for each city or town in Texas a list of the insured fire losses paid under the Texas Standard Policy in that city or town for the preceding statistical year.

(b) The list shall include

(1) the names of persons recovering losses under Texas Standard Policies;

(2) the addresses or locations where the losses occurred;

(3) the amount paid by the insurance company on each loss.

(c) The board shall obtain the information to make the lists from insurance company reports of individual losses during the statistical year.

Sec. 3. Upon the request of any city or town, or its duly authorized agent or fire marshal, the board shall provide that city and town with a copy of the list for its particular area.

Sec. 4. Each city or town shall investigate its list to determine the losses actually occurring in its limits and shall make a report to the board which report shall include

(1) a list of the losses that actually occurred in the limits of the city or town;

(2) a list of any losses not occurring in the limits of the city or town; and

(3) other evidence essential to establishing the losses in the city or town.

Sec. 5. The board shall make such changes or corrections as to it shall seem appropriate in order to correct the list of insured fire and lightning losses paid under the Texas Standard Policy in a particular city or town and said list of losses, as changed or corrected, shall be used to determine the fire record credit or debit for each particular city or town for the next year.

Sec. 6. The board shall set and collect a charge for compiling and providing a list of fire and lightning losses paid under the Texas Standard Policy in a particular city or town and as the board shall deem appropriate to administer the fire record system.

Sec. 7. The board is authorized to require each and every city or town in the State of Texas and each and every insurance company or carrier of every type and character whatsoever doing business

in the State of Texas to furnish to it a complete and accurate list of all fire and lightning losses occurring within the State of Texas and reflected in their records for the purpose of accumulating statistical information for the control and prevention of fires.

Sec. 8. The board may, at its discretion, furnish such list only during such time as the fire record system remains in force and effect.

[Acts 1967, 60th Leg., p. 2063, ch. 765, § 1, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 2063, ch. 765, § 2 provided: "All laws and parts of laws in conflict with the provisions of this Act are hereby repealed."

#### Art. 5.26. Maximum Rate Fixed, and Deviations Therefrom

(a) A maximum rate of premiums to be charged or collected by all companies transacting in this state the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the Board, and no such fire insurance company shall charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance as herein defined in excess of the maximum rate as herein provided for; provided, however, upon the written application of the insured stating his reasons therefor, filed with and approved by the Board, a rate in excess of the maximum rate promulgated by the Board may be used on any specific risk.

(b) Any insurer desiring to write insurance at a less rate than the maximum rate provided for in paragraph (a) above shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser rate than the maximum rate, on a state-wide basis or by reasonable territories as approved by the Board, from the class rates or schedules or rating plans respecting fire insurance and its allied lines of insurance or class of risk within such kind of insurance or a combination thereof promulgated by the Board. Such application shall specify the basis of the deviation, and shall be accompanied by the data upon which the applicant relies; provided, however, such application, data and all other information filed in connection with such deviation shall be public records open to inspection at any reasonable time. The provisions of this paragraph shall not be construed to prohibit the application of a uniform scale of percentage deviations from the maximum rate provided the general standards fixed in paragraph (d) hereof are met.

(c) Provided further, that any insurer desiring to write insurance at a lesser net rate than the maximum rate provided for in paragraph (a) above, either individually or as a member of a group or association, said lesser net rate being obtained by the application of a rating plan or procedure in use by it or by a group or association of which it is a member, which said rating plan or procedure shall apply only to special types or classes of risk in connection with which an inspection or engineering service and set of standards all acceptable to the Board are used, and which inspection or engineering

services and set of standards have been and will continue to be maintained, shall make a written application to the Board for permission to file its said rating plan or procedure, the application of which would produce such lesser net rate. Said application shall specify the basis of the modification and shall be accompanied by the data on which applicant relies. Every insurer or group or association which avails itself of the provisions of this paragraph shall thereafter follow in the conduct of its business as to such classes or types of risks, only such rating plan or procedure ordered as permitted by the Board for its use as to said special types or classes of risks. If the Board shall issue an order permitting such deviation, such insurer or such group or association for it shall file with the Board all rates of premium or deposit for individual risks underwritten by it, which rates shall be considered as deviations from the rates that would have been promulgated by the Board on such risks.

(d) In considering any application provided for in (b) or (c) above, the Board shall give consideration to the factors applied by insurers or rating organizations generally used by such insurers or rating organizations in determining the bases for rates; the financial condition of the insurer; the method of operation and expenses of such insurer; the loss experience of the insurer, past and prospective, including where pertinent the conflagration and catastrophe hazards, if any, both within and without this state; to all factors reasonably related to the kind of insurance involved; to a reasonable margin for an underwriting profit for the insurer, and, in the case of participating insurers, to policyholders' dividends. The Board shall issue an order permitting the deviation for such insurer to be filed if it is found to be justified upon the applicant's showing that the resulting premiums would be adequate and not unfairly discriminatory. The Board shall issue an order denying such application if it finds that the resulting premiums would be inadequate or unfairly discriminatory. As soon as reasonably possible after such application has been made the Board shall in writing permit or deny the same; provided, that any such application shall be deemed permitted unless denied within thirty (30) days; provided, that the Board may by official order postpone action for one additional period not exceeding thirty (30) days if deemed necessary for proper consideration; except that deviations in effect at the time this Act becomes effective shall be controlled by subdivision (f) hereof. Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of final granting of such permission whether by the Board in the first instance or upon direction of the court. However, a deviation may be withdrawn at any time with the approval of the Board or terminated by order of the Board, which order must specify the reasons for such termination. From and after the effective date of this Act all deviations from maximum rates shall be governed by this Article.

(e) No policy of insurance in force prior to the taking effect of any changes in rate that result from the provisions of this Act shall be affected thereby, unless there shall be a change in the hazard of the risk necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to new rates developed under the provisions hereof.

(f) Any deviations from maximum rates on file with the Board and in effect until the effective time of this Act shall remain in effect for a period of thirty (30) days after such effective time, and if during such thirty (30) day period a written application to the Board is made for permission to file such deviations under this Act, same shall remain in effect until the Board has entered its order either permitting or denying the application and during the full course of any hearings on and appeal from any such order.

(g) The Board may call a public hearing on any application for permission to file a deviation or a hearing on a permitted deviation and shall call a hearing upon the request of any aggrieved policyholder of the company filing the deviation made within thirty (30) days after the granting or denying of any deviation. The Board shall give reasonable notice of such hearings and shall hear witnesses respecting such matters. Any applicant dissatisfied with any order of the Board made without a hearing under this Article may within thirty (30) days after entry of such order make written request of the Board for a hearing thereon. The Board shall hear such applicant within twenty (20) days after receiving such request and shall give not less than ten (10) days written notice of the time and place of the hearing. Within fifteen (15) days after such hearing the Board shall affirm, reverse or modify by order its previous action, specifying in such order its reasons therefor. Any applicant who may be dissatisfied with any order of the Board respecting its application may appeal to the District Court of Travis County, Texas, and not elsewhere, by filing a petition within thirty (30) days after the rendition or entry of such order setting forth its grounds of objection thereto, in which said action the appealing applicant shall be plaintiff and the Board shall be defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided in the case of an appeal from the Justice Court to the County Court. The judgment of the District Court shall be appealable as in any other civil case. Such action shall have precedence over other civil cases on the dockets of the trial and appellate courts. Should the Board terminate or refuse to renew a permitted deviation or refuse permission for filing of a deviation under subdivision (f) hereof, then such deviation shall remain in effect during the course of any hearing thereon and thirty (30) days thereafter, and during the course of any appeal taken from such order and until final judgment of the courts. The Board shall not be required to give any appeal or supersedeas bond in any cause arising hereunder. All hearings before the Board and appeals to the District Courts under this Article shall be governed exclusively by this Article.

(h) This Article shall not apply to any companies now operating under Chapters 12 and 13 of Title 78 of the Revised Civil Statutes of 1925, as amended, which have heretofore been repealed, or to Farm Mutual Insurance Companies operating under Chapter 16 of this Code; County Mutual Insurance Companies operating under Chapter 17 of this Code; Underwriters at a Lloyd's operating under Chapter 18 of this Code; Reciprocals and inter-insurance exchanges operating under Chapter 19 of this Code; nor shall it apply to other purely mutual or to other purely profit-sharing fire insurance companies incorporated or unincorporated under the laws of this state, and carried on by the members thereof solely for the protection of their property and not for profit.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1957, 55th Leg., p. 1443, ch. 497, § 1.]

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1957, 55th Leg., p. 1443, ch. 497, § 1.]

#### Art. 5.27. No Company Exempt

Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this State, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this State or to some foreign county,<sup>1</sup> whether such company is organized under the laws of this State or under the laws of any other state, territory or possession of the United States, or foreign country, or by authority of the Federal Government, now holding certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this subchapter and that it agrees to transact business in this State, subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this subchapter, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the shore end of all marine risks insured against loss by fire.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

<sup>1</sup> Probably should read "country".

#### Art. 5.28. Statements and Books

Said Board is authorized and empowered to require sworn statements for any period of time from any insurance company affected by this law and from any of its directors, officers, representatives, general agents, state agents, special agents, and

local agents of the rates and premiums collected for fire insurance on each class of risks, on all property in this State and of the causes of fire, if such be known, if they are in possession of such data, and information, or can obtain it at a reasonable expense; and said Board is empowered to require such statements showing all necessary facts and information to enable said Board to make, amend and maintain the general basis schedules provided for in this law and the rules and regulations for applying same and to determine reasonable and proper maximum specific rates and to determine and assist in the enforcement of the provisions of this law. The said Board shall also have the right, at its discretion, either personally, or by someone duly authorized by it, to visit the office whether general, local or otherwise, of any insurance company doing business in this State, and the home office of said company outside of this State, if there be such, and the office of any officers, directors, general agents, state agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives, to produce for inspection by said Board or any of its duly authorized representatives all books, records and papers of such company or such agents and representatives; and the said Board or its duly authorized agents or representatives shall have the right to examine such books and papers and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose. Said Board shall be further empowered to require the fire insurance companies transacting business in this State or any of them, to furnish said Board with any and all data which may be in their possession, either jointly or severally, including maps, tariffs, inspection reports and any and all data affecting fire insurance risks in this State, or in any portion thereof, and said Board shall be empowered to require any two (2) or more of said companies, or any joint agent or representative of them, to turn over any and all such data in their possession, or any part thereof, to said Board for its use in carrying out the provisions of this law.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.29. Schedule and Report

The rates of premium fixed by said Board in pursuance of the provision of this subchapter shall be at all times reasonable and the schedules thereof made and promulgated by said Board shall be in such forms as will in the judgment of the Board most clearly and in detail disclose the rate so fixed and determined by said Board to be charged and collected for policies of fire insurance. Said Board may employ and use any facts obtainable from and concerning fire insurance companies transacting business in this State, showing their expense and charges for fire insurance premiums for any period or periods said Board may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premiums for fire

insurance. The said Board in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms, privileges and conditions which in anywise affect such rates, and copies of all such schedules shall be furnished by said Board to any and all companies affected by this subchapter applying therefor, and the same shall be furnished to any citizens of this State applying therefor, upon the payment of the actual cost thereof. No rate or rates fixed or determined by the Board shall take effect until it shall have entered an order or orders fixing and determining same, and shall give notice thereof to all fire insurance companies affected by this subchapter, authorized to transact business in the State. The Board, and any inspector or other agent or employee thereof, who shall inspect any risk for the purpose of enabling the Board to fix and determine the reasonable rate to be charged thereon, shall furnish to the owner of such risk at the date of such inspection a copy of the inspection report, showing all defects that may operate as charges to increase the insurance rate.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.30. Analysis of Rate

When a policy of fire insurance shall be issued by any company transacting the business of fire insurance in this State, such company shall furnish the policyholder with a written or printed analysis of the rate or premium charged for such policy, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of such rate. All schedules of rates promulgated by said Board shall be open to the public, and every local agent of such fire insurance company shall have and exhibit to the public copies of such schedules covering all risks upon which he is authorized to write insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.31. Change or Limit of Rate

Said Board shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty (30) days' notice, or to prescribe that any such rate or rates shall be in effect for a limited time, and said Board shall also have full power and authority to prescribe reasonable rules whereby in cases where no rate of premium shall have been fixed and determined by the Board, for certain risks or classes of risks, policies may be written thereon at rates to be determined by the company. Such company or companies shall immediately report to said Board such risk so written, and the rates collected therefor, and such rates shall always be subject to review by the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.32. Petition for Change

Any such fire insurance company shall have the right at any time to petition the Board for an order changing or modifying any rate or rates fixed and determined by the Board, and the Board shall con-

sider such petition in the manner provided in this subchapter and enter such order thereon as it may deem just and equitable.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.33. Reducing Hazard

The Board shall have full authority and power to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, and also for all added fire fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village or locality, and also to give credit for a good fire record made by any city, town, village or locality. Said Board shall also have the power and authority to compel any company to give any or all policy holders credit for any and all hazards said policy holder or holders may reduce or remove. For the purposes of this Article, the installation of a new standard fire hydrant approved by the State Board of Insurance within the required distance of a risk as prescribed by the State Board of Insurance shall constitute a reduction in hazard by the policy holder or holders. Said credit shall be in proportion to such reduction or removal of such hazard and said company or companies shall return to such policy holder or holders such proportional part of the unearned premium charged for such hazard that may be reduced or removed.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1971, 62nd Leg., p. 3005, ch. 992, § 1, eff. June 15, 1971.]

#### Art. 5.34. Revising Rates

The Board shall have authority after having given reasonable notice, not exceeding thirty (30) days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this subchapter. No policy in force prior to the taking effect of such changes or amendments shall be affected thereby, unless there shall be a change in the hazard of the risk, necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.35. Uniform Policies

The Board shall make, promulgate and establish uniform policies of insurance applicable to the various risks of this State, copies of which uniform policies shall be furnished each company now or hereafter doing business in this State. After such uniform policies shall have been established and promulgated and furnished the respective companies doing business in this State, such companies shall, within sixty (60) days after the receipt of such forms of policies, adopt and use said form or forms and no other; also all companies which may commence

business in this State after the adoption and promulgation of such forms of policies, shall adopt and use the same and no other forms of policies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.36. Standard Forms

The Board shall prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the Board. The Board shall have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.37. Lien on Insured Property

Any provision in any policy of insurance issued by any company subject to the provisions of this subchapter to the effect that if said property is encumbered by a lien of any character or shall after the issuance of such policy become encumbered by a lien of any character, then such encumbrance shall render such policy void, shall be of no force and effect. Any such provision within or placed upon any such policy shall be null and void.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.38. Co-insurance Clauses

No company subject to the provisions of this subchapter may issue any policy or contract of insurance covering property in this State, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than expressed in such policy, nor in any way providing that the assured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provisions, except as herein provided, shall be null and void, and of no effect; provided, co-insurance clauses and provisions may be inserted in policies written upon cotton, grain, or other products in process of marketing, shipping, storing or manufacturing.

Provided, further, it shall be optional with an insured to accept a policy or contract of insurance containing such clause or provision covering other classes of property, except private dwellings, and except stocks of merchandise offered for sale at retail when of a value less than Ten Thousand (\$10,000.00) Dollars, when a reduction in the rate is allowed for such policy, and said clause in such policy shall be valid and binding; and the Board of Insurance Commissioners shall have power to name the rates to apply when such co-insurance clause or provision shall be used.

Provided, further, that by appropriate order the Board of Insurance Commissioners may authorize, and in its discretion require the use of any form of co-insurance clauses on or in connection with insurance policies covering against the hazards of torna-

do, windstorm and hail, on any or all classes of property; the Board to make such rules and regulations with reference to such clauses and the use thereof, as well as credits in premium rates for the use thereof on policies covering against the hazards mentioned as it may deem proper.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.39. Complaint of Rates or Orders

Any citizen or number of citizens of this State or any policyholder or policyholders, or any insurance company affected by this subchapter, or any board of trade, chamber of commerce, or other civic organization, or the civil authorities of any town, city, or village, shall have the right to file a petition with the Board, setting forth any cause of complaint that they may have as to any order made by this Board, or any rate fixed and determined by the Board, and they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; upon the filing of such petition, the party complained of, if other than the Board, shall be notified by the Board of the filing of such petition and a copy thereof furnished the party or parties, company or companies, of whom complaint is made, and the said petition shall be set down for a hearing at a time not exceeding thirty (30) days after the filing of such petition and the Board shall hear and determine said petition; but it shall not be necessary for the petitioners or any one of them to be present to present the cause to the Board, but they shall consider the testimony of all witnesses, whether such witnesses testify in person or by depositions, or by affidavits, and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.40. Hearing of Protests

The Board shall give the public and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty (30) days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the State, and such notice to any insurance company to be affected thereby shall be mailed addressed to the State or general agent of such company, if such address be known to the Board, or if not known, then such letter shall be addressed to some local agent of such company, or if the address of a local agent be unknown to the Board, then by publication in one or more of the daily papers of the State, and the Board shall hear all protests or complaints from any insurance company or any citizen or any city, or town, or village or any commercial or civic organization as to the inadequacy or unreasonableness of any rates fixed by it or approved by it, or as to the inadequacy or unreasonableness of any general basis schedules promulgated by it or the injustice of any

order or decision by it, and if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision shall be dissatisfied with any regulation, schedule or rate adopted by such Board, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty (30) days after the making of such regulation or order, or rate, or schedule or within thirty (30) days after hearing above provided for, to bring an action against said Board in the District Court of Travis County to have such regulation or order or schedule or rate vacated or modified; and shall set forth in a petition therefor the principal grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit the issue shall be formed and the controversy tried and determined as in other civil cases. The court may set aside and vacate or annul any or all or any part of any regulation, schedule, order or rate promulgated or adopted by said Board, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree suspending or restraining, directly or indirectly, the enforcement of any schedule, rate, order or regulation of said Board shall be granted. In such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate which in the judgment of court is fair and reasonable, during the pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the Board a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the Board whatever difference in the rate of insurance, it may be finally determined to exist between the rates as fixed by the Board complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit, and the said Board, when it receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under any provision of this article within said period of thirty (30) days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said Board under the provisions of this law until all of the remedies provided herein shall have been exhausted by the party complaining.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.41. Rebating or Discrimination**

No company shall engage or participate in the insuring or reinsuring of any property in this State against loss or damage by fire except in compliance with the terms and provisions of this law; nor shall any such company knowingly write insurance at any lesser rate than the rates herein provided for, and it shall be unlawful for any company so to do, unless it shall thereafter file an analysis of same with the Board, and it shall be unlawful for any company, or its officers, directors, general agents, state agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly, as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or anything of value whatsoever, not specified in the policy. Nothing in this law shall be construed to prohibit a company from sharing its profits with its policyholders, if such agreement as to profit sharing shall be placed on or in the face of the policy, and such profit sharing shall be uniform and shall not discriminate between individuals or between classes. No part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, state agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination. If any agent or company shall issue a policy without authority, and any policyholder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policies, although the company issued said policy in violation of the provisions of this subchapter. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.41-1. Penalty for Accepting Rebates**

Whoever shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employes, intermediaries or representatives, or any other person, any rebate of premium payable on policy, or any special favor or advantage in the dividends or other financial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance, shall be fined not

exceeding one hundred dollars or be imprisoned in jail not exceeding ninety days, or both.  
[1925 P.C.]

**Art. 5.42. Not Retroactive**

The provisions of this subchapter shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this subchapter. All policies heretofore issued which provide that said policies shall be void for non-payment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates named in said provisions fixing the date of payment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.43. Duty of Fire Marshal**

The State Fire Marshal, at the discretion of the Board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or a district judge, or of a sheriff or county attorney of any county where a fire occurs within the district or county of the officers making such request, or of any fire insurance company, or its general, State or special agent, interested in a loss, or of a policyholder sustaining a loss, or upon the direction of the Board, shall forthwith investigate at the place of such fire before loss can be paid, the origin, cause and circumstances of any fire occurring within this State, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the Board. The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. When, in his opinion, further investigation is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with arson, or with attempt to commit arson, or of conspiracy to defraud or criminal conduct in connection with such, he shall arrest or cause to be arrested such person, and shall furnish to the proper prosecuting attorney all evidence secured, together with the names of witnesses and all information obtained by him, including a copy of all material testimony taken in the case, and it shall be the duty of the State Fire Marshal to

assist in the prosecution of all such complaints filed by him. All investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and the witnesses may be kept separate from each other and not allowed to communicate with such others until they have been examined; and all testimony taken in an investigation under the provisions of this law may, at the election of the State Fire Marshal, be withheld from the public.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.43-1. Fire Extinguishers; Installation and Servicing; Penalties**

**Purpose**

Sec. 1. The purpose of this Act is to regulate the servicing of portable fire extinguishers and the installing and servicing of fixed fire extinguisher systems, in the interest of safeguarding lives and property.

**Administration**

Sec. 2. The State Board of Insurance shall administer the Act and it may issue rules and regulations which it considers necessary to its administration through the State Fire Marshal.

**Definitions**

Sec. 3. As used in this Act the following terms have the meanings specified in this section.

(a) "Firm" means any person, partnership, corporation, or association.

(b) "Hydrostatic testing" means pressure testing by hydrostatic methods.

(c) "Portable fire extinguisher" means any device that contains within it chemical fluids, powder, or gases for extinguishing fires and has a label of approval attached by a nationally recognized testing laboratory, such as, but not limited to, the Underwriters Laboratory and Factory Mutual.

(d) "Service and servicing" means servicing portable fire extinguishers or fixed fire extinguisher systems by charging, filling, maintaining, recharging, refilling, repairing, or testing.

(e) "Fixed fire extinguisher system" means those listed or approved fire extinguisher systems installed in compliance with one or more of the following:

(1) the National Fire Protection Association Standards Foam Extinguisher Systems, No. 11, 1969 edition;

(2) the National Fire Protection Association Standards on Carbon Dioxide Extinguisher Systems, No. 12, 1968 edition;

(3) the National Fire Protection Association Standards for Dry Chemical Extinguisher Systems, No. 17, 1969 edition;

(4) the National Fire Protection Association Standards for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment, No. 96, 1969 edition;

(5) the American Restaurant Association's standards for fire prevention; and

(6) the National Fire Protection Association Standards for Halogenated Fire Extinguisher Systems, No. 12A, 1970 edition.

**Registration and Licensing**

Sec. 4. (a) Each firm engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems must have a certificate of registration issued by the State Board of Insurance. The initial fee for the certificate of registration is \$225 and the renewal fee for each year thereafter is \$150.

(b) Each employee, other than an apprentice, of firms engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems who services extinguishers or fixed systems, must have a license issued by the State Board of Insurance. The initial fee for the license is \$25 and the renewal fee for each year thereafter is \$15.

(c) Each person servicing portable fire extinguishers or fixed fire extinguisher systems as an apprentice shall, before servicing any portable fire extinguisher or servicing any fixed fire extinguisher system, apply to the State Board of Insurance for an apprentice permit. The fee for the apprentice permit is \$15. A copy of the application may be used by the applicant as proof of his being temporarily licensed until the official apprentice permit is issued or denied.

(d) Each firm performing hydrostatic testing of fire extinguishers manufactured in accordance with the specifications and procedures of the United States Department of Transportation shall do so in accordance with the procedures specified by that department for compressed gas cylinders and shall be required to have a hydrostatic testing certificate authorizing such testing issued by the state fire marshal. Persons qualified to do this work shall be given such authority on their licenses. The initial fee shall be \$125, and the renewal fee for each year thereafter shall be \$75. Hydrostatic testing of fire extinguishers not performed pursuant to the United States Department of Transportation specifications shall be performed as recommended by the National Fire Protection Association.

**Selling or Leasing of Portable Fire Extinguishers**

Sec. 5. (a) No portable fire extinguisher or fixed fire extinguisher system may be sold or installed in this state unless it carries a label of approval of a

nationally recognized testing laboratory or a testing laboratory approved by the State Board of Insurance.

(b) The sale, servicing, or recharging of carbon tetrachloride fire extinguishers is prohibited.

(c) Except as provided in Section 6 of this Act, only the holder of a current and valid license or an apprentice permit issued pursuant to this Act may service portable fire extinguishers or install and maintain fixed fire extinguisher systems.

(d) A person who has been issued a license pursuant to this Act to service portable fire extinguishers or install and service fixed fire extinguisher systems must be an employee, agent, or servant of a firm that holds a certificate of registration issued pursuant to this Act.

#### Exceptions

Sec. 6. The provisions of this Act do not apply to the following:

(a) the filling or charging of a portable fire extinguisher by the manufacturer prior to its initial sale;

(b) the servicing by a firm of its own portable fire extinguishers and/or fixed systems by its own personnel specially trained for such servicing;

(c) the installation or servicing of water sprinkler systems installed in compliance with the National Fire Protection Association's Standards for the Installation of Sprinkler Systems, No. 13;

(d) firms engaged in the retailing or wholesaling of portable fire extinguishers as defined in Section 3, but not engaged in the installation or recharging of them;

(e) fire departments recharging portable fire extinguishers as a public service where no charge is made, provided, however, that the members of the fire department are trained in the proper filling and recharging of the fire extinguishers.

#### Applications and Hearings on Licenses, Permits and Certificates

Sec. 7. (a) Applications and qualifications for licenses, permits, and certificates issued hereunder shall be made pursuant to regulations adopted by the State Board of Insurance.

(b) The State Board of Insurance may through the State Fire Marshal conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of licenses, apprentice permits, hydrostatic testing certificates, certificates of registration, or approvals of testing laboratories issued under this Act or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

#### Powers and Duties of State Board of Insurance

Sec. 8. The State Board of Insurance shall:

(a) formulate and administer such rules and regulations as may be determined essentially necessary

for the protection and preservation of life and property, in controlling:

(1) the registration of firms engaging in the business of servicing portable fire extinguishers or installing and maintaining fixed fire extinguisher systems;

(2) the registration of firms engaged in the business of hydrostatic testing of portable fire extinguishers;

(3) the examination of persons applying for a license to service portable fire extinguishers;

(4) the licensing of persons to service portable fire extinguishers and install fixed fire extinguisher systems; and

(5) the requirements for the servicing of portable fire extinguishers and the maintenance of fixed fire extinguisher systems;

(b) evaluate the qualifications of firms or individuals for a certificate of registration to engage in the business of servicing portable fire extinguishers or installing fixed fire extinguisher systems;

(c) conduct examinations to ascertain the qualifications and fitness of applicants for a license to service portable fire extinguishers or install fixed fire extinguisher systems;

(d) issue certificates of registration for those firms that qualify under the rules and regulations to engage in the business of servicing portable fire extinguishers or installing and servicing fixed fire extinguisher systems, and issue licenses, apprentice permits, and authorizations to perform hydrostatic testing to the firms or individuals who qualify; and

(e) evaluate the qualifications of firms seeking approval as testing laboratories for portable fire extinguishers.

#### Delegation of Power by State Board of Insurance

Sec. 9. The State Board of Insurance may delegate the exercise of all or part of its functions, powers, and duties under this Act, except for the issuance of licenses, certificates, and permits, and the formulation of rules and regulations, to a Fire Extinguisher Advisory Council whose members shall be appointed by the State Board of Insurance. The members shall be experienced and knowledgeable in one or more of the following areas: fire services, fire extinguisher manufacturing, fire insurance inspection or underwriting, fire extinguisher servicing, or be a member of a fire protection association or industrial safety association.

#### Certain Acts Prohibited

Sec. 10. No person may do any of the following:

(1) engage in the business of servicing portable fire extinguishers without a current certificate of registration;

(2) engage in the business of installing or servicing fixed fire extinguisher systems without a current certificate of registration;

(3) service portable fire extinguishers or fixed fire extinguisher systems without a current license;

(4) perform hydrostatic testing of portable fire extinguishers manufactured in accordance with the specifications of the United States Department of Transportation without a current hydrostatic testing certificate;

(5) obtain or attempt to obtain a certificate of registration or license by fraudulent representation; and

(6) service or sell portable fire extinguishers contrary to the provisions of this Act or the rules and regulations formulated and administered under the authority of this Act.

#### Use of Funds

Sec. 11. All funds collected through the licensing and other provisions of this Act, excepting penalties, shall be paid to the State Board of Insurance and be deposited in a special fund with the State Treasurer for carrying out the administration of this Act. All such funds deposited with the State Treasurer during the biennium ending August 31, 1972, are hereby appropriated to the State Board of Insurance for its use in carrying out its duties and responsibilities under this Act.

#### Penalties

Sec. 12. A person who violates Section 10 of this Act shall be fined not less than \$100 nor more than \$200 for the first offense, not less than \$300 nor more than \$1,000 for the second offense, and be imprisoned for not less than one nor more than two years, for the third offense.

[Acts 1971, 62nd Leg., p. 1993, ch. 616, eff. June 4, 1971.]

#### Art. 5.44. Authority of Fire Marshal

The State Fire Marshal is hereby authorized to enter at any time any buildings or premises where fire occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin and circumstances of such fire. The State Fire Marshal, upon complaint of any person, shall, at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within this State, and it shall be his duty to enter upon and make or cause to be entered upon and made, at any time, a thorough examination of mercantile, manufacturing and public buildings, and all places of public amusement, or where public gatherings are held, together with the premises belonging thereto. Whenever he shall find any building or other structure which for want of repair or by reason of age or dilapidated condition, or which for any cause is liable to fire, and which is so situated as to endanger other buildings or property, or is so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with

which the same may be connected, or dangerous arrangement or lighting systems or devices, or dangerous storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character, or liable to cause or promote fire, or create conditions dangerous to firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the occupant or owner of such building or premises, and the State Fire Marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article and in such case he shall not be required to give bond. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.45. Acting Fire Marshal

If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the Board may allow. If the investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policyholder or such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the Board. The party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the Board an amount of money in the judgment of said Board sufficient to defray the expenses of said Fire Marshal in conducting such investigation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.46. Result of Investigation

No action taken by the State Fire Marshal shall affect the rights of any policyholder or any company in respect to a loss by reason of any fire so investigated; nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance company, its officers, agents or adjusters, nor by any policyholder, or anyone representing him, made with reference to the origin, cause or supposed origin or cause of a fire to the Fire Marshal or to anyone acting for him, or under his direction, be admitted in evidence or made the basis for any civil action for damages.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.47. To Cancel Authority**

If any insurance company affected by the provisions of this subchapter shall violate any provision of this subchapter, the Board shall, by and with the consent of the Attorney General, cancel its certificate of authority to transact business in this State. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.48. Revocation of Certificate**

The Board, upon ascertaining that any insurance company or officer, agent or representative thereof, has violated any provision of this subchapter, may, at its discretion, and with the consent and approval of the Attorney General, revoke the certificate of authority of such company, officer, agent, or representative but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent, or representative to the infliction of any other penalty provided by law. Any action, decision or determination of the Board and the Attorney General in such cases shall be subject to the review of the courts of this State as herein provided. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.48-1. Penalty for Violation of Fire Insurance Law**

Any officer or director of any fire insurance company affected by the statutes of this State creating the State Insurance Commission,<sup>1</sup> or any agent, or any one acting or employed by such company who alone or in conjunction with any corporation, company or person, shall wilfully do or cause to be done any act prohibited or declared to be unlawful by such statutes, or who wilfully fails to do any act required to be done by such statutes, or who shall wilfully permit any act directed not to be done, or who shall be guilty of any wilful infraction of such statutes, shall be fined not less than three hundred nor more than one thousand dollars. [1925 P.C.]

<sup>1</sup> Now State Board of Insurance (see art. 1.02).

**Art. 5.48-2. Witness Must Testify**

No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of another charged with violating any provision of the laws relating to fire insurance on the ground that it may incriminate him under the laws of this State; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may testify or produce evidence under this law. [1925 P.C.]

**Art. 5.49. Tax on Premiums as Additional Tax**

The State of Texas shall assess and collect not exceeding an additional one and one-fourth (1 and ¼%) per cent of the gross fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, in-

urrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, explosion as defined in Article 5.52 of this code, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, insurance premiums of all companies doing such character of insurance business in this State according to reports made to the Board of Insurance Commissioners as required by law; and said taxes, when collected, shall be placed with the State Treasury, in a separate fund, which shall be known as the Fire Insurance Division Fund, which fund shall be kept separate and apart from other funds and moneys in his hands; and said special fund, or so much thereof as may be necessary, shall be held and expended for the purpose of carrying out the provisions of this subchapter; and should there be any unexpended balance at the end of any year, said balance shall remain in said fund and the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in said fund in the Treasury, will be sufficient to pay all expenses for the current year and not exceed the amount necessary to pay all necessary expenses of maintaining the Fire Insurance Division of said Board, so that no deficit shall occur in said fund, which fund shall be paid out upon requisition made out and filed by a majority of the Board, when the Comptroller shall issue warrants therefor. The taxes levied and assessed by this article shall be independent of and in addition to all other taxes now imposed, or which may hereafter be imposed by law, against any company mentioned herein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.50. Exceptions**

This subchapter shall not apply to farm mutual insurance companies operating under Chapter 16 of this Code or to any company now operating under Chapter 12 of Title 78 which has heretofore been repealed, and none of the Articles of this subchapter, except Articles 5.35, 5.36, 5.37, 5.38, 5.39, 5.40 and 5.49 shall apply to other purely mutual or to other purely profit sharing fire insurance companies incorporated or unincorporated under the laws of this State, and carried on by the members thereof solely for the protection of their property and not for profit, or to a purely cooperative inter-insurance and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 13.]

**Art. 5.51. Compensation of Board**

The necessary compensation of experts, clerical force, and other persons employed by said Board, and all necessary traveling expenses, and such other

expenses as may be necessary, incurred in carrying out the provisions of this subchapter, shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Board. The total amount of all salaries and said other expenses shall not exceed the sum produced by the assessments on the gross premiums of all fire insurance companies doing business in this State. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.52. Provisions Governing Lightning, Windstorm, Hail, Invasion, Riot, Vandalism, Strikes, Lockouts and Other Insurance; "Explosion" Defined**

The writing of insurance against loss by lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, explosion, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this State, and all matters pertaining to such insurance except as hereinafter set out as to inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed and controlled by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D of this Chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles of this code.

The term "explosion" as used above shall not include insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operating by any of the previously named boilers, vessels or machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four

(4) families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.53. Application to Inland Marine Insurance, Rain Insurance, or Hail Insurance on Farms Crops; Definitions; Rates and Rating Plans Filed; Policy Forms; Checking Offices**

The provisions of this article shall apply to all insurance which is now or hereafter defined by statute, by ruling of the Board of Insurance Commissioners, or by lawful custom, as inland marine insurance, rain insurance, or insurance against loss by hail on farm crops. None of the terms contained in this article and Article 5.52 shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly insured under marine as distinguished from inland marine insurance policies.

Whenever used in this article the term "Marine Insurance" shall mean and include insurance and reinsurance against any and all kinds of loss or damage to the following subject matters of insurance interest therein:

Marine Insurance. Hulls, vessels and craft of every kind, aids to navigation, dry docks and marine railways, including marine builders' and repairers' risks, and whether complete or in process of or awaiting construction; also all marine protection and indemnity risks; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation on or under any seas, lakes, rivers, or other waters or in the air, or on land in connection with or incident to export, import or waterborne risks, or while being assembled, packed, crated, baled, compressed or similarly prepared for such shipment or while awaiting the same, or during any delays, storage, transshipment or reshipment incident thereto, including the insurance of war risks in respect to any or all of the aforesaid subject matters of insurance.

(a) As to all classes of insurance contained in this article, for which class rates or rating plans are customarily fixed by rating bureaus or associations of underwriters, rates or rating plans, together with applicable policy forms and endorsements, shall be filed by all authorized insurers

writing such classes with the Board in such manner and form as it shall direct; and all rates on risks not falling within a recognized class fixed by any such bureau or association, together with applicable policy forms and endorsements, shall be similarly filed. Due consideration shall be given to past and prospective loss experience within and outside the State, including catastrophe hazard, to a reasonable margin for profit and contingencies, and to all other relevant factors within and outside the State.

(b) As soon as reasonably possible after the filing has been made, the Board shall in writing approve or disapprove the same; provided that any filing of class rates or rating plans, together with applicable policies and endorsements, shall be deemed approved unless disapproved within thirty (30) days; provided the Board may by official order postpone action for such further time not exceeding thirty (30) days, as it deems necessary for proper consideration; and provided further that rates on risks not falling within a recognized class fixed by a rating bureau or association of underwriters, together with applicable policies and endorsements, shall be deemed approved from the date of filing to the date of formal approval or disapproval. The Board may investigate rates not required to be filed under the provisions of this article and may require the filing of any particular rate, together with applicable policies and endorsements, not otherwise required to be filed.

(c) Any filing by an insurer of a rate less than an approved rate relative to any of the rates mentioned in sub-division (a) of this article may be used by such insurer after same shall have been approved by the Board, or after same shall have been on file with the Board without action for thirty (30) days.

(d) If at any time the Board finds that an approved filing no longer meets the requirements of this article, it may after hearing issue an order withdrawing its approval thereof.

(e) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Board to accept such filings on its behalf. A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside the State, may be licensed as a rating organization in connection with any of the sorts of insurance mentioned in this article, subject to the conditions, not inconsistent herewith, prescribed by law for such

organizations in connection with other kinds of insurance, provided two or more insurers have designated it to act for them as to any such class or classes of insurance in the manner prescribed herein. An insurer may belong or subscribe to rating bureaus or associations for other types of insurance.

(f) Insurers may, subject to the supervision of the Board, operate any checking office or offices deemed necessary or advisable.

(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D. of this chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles, except that wherever in any of said articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this article shall control.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.54. Associations Excepted

Nothing in Articles 5.49, 5.52 and 5.53 of this subchapter shall ever be construed to apply to any farm mutual insurance company operating under Chapter 16 of this Code or to any company now operating under Chapter 12, of Title 78, which has heretofore been repealed. Nothing in Articles 5.52 and 5.53 of this subchapter shall ever be construed to apply to any county mutual insurance company operating under Chapter 17 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 14.]

#### SUBCHAPTER D. WORKMEN'S COMPENSATION INSURANCE

#### Art. 5.55. Workmen's Compensation Rates

The Board shall make, establish and promulgate all classifications of hazards, rates of premiums and rating plans respectively applicable to each, contemplated and provided for by Title 130, known as the Workmen's Compensation Law<sup>1</sup> and/or by the "Longshoremen's and Harbor Workers' Compensation Act"<sup>2</sup> as enacted by the Congress of the United States. Said Board shall publish all rates and rating plans promulgated by it as affecting Compensation Insurance in this State, and said rates and rating plans, or any change therein, shall be published fifteen (15) days before they become effective and in force.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 7.]

<sup>1</sup> Civil Statutes, art. 8306 et seq.

<sup>2</sup> 33 U.S.C.A. § 901 et seq.

**Art. 5.56. To Prescribe Standard Forms**

The Board shall prescribe standard policy forms to be used by all companies or associations writing workmen's compensation insurance in this State. No company or association authorized to write workmen's compensation insurance in this State shall, except as hereinafter provided for, use any classifications of hazards, rates of premium, or policy forms other than those made, established and promulgated and prescribed by the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.57. Uniform Policy**

The Board shall prescribe a uniform policy for workmen's compensation insurance and no company or association shall thereafter use any other form in writing workmen's compensation insurance in this State, provided that any company or association may use any form of endorsement appropriate to its plan of operation, if such endorsement shall be first submitted to and approved by the Board, and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this subchapter, and shall be sufficient cause for revocation of license to write workmen's compensation insurance within this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.58. Rate Administration**

(a) Recording and Reporting of Loss Experience and other data.

The Board shall, after due consideration, promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rates comply with the standards set forth in Article 5.60. In promulgating such rules and plans, the Board shall have due regard for the rates approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data.

Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with other States.

In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may

consult and cooperate with them with respect to rate-making and the application of rating systems.

(d) Rules and Regulations.

The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 8.]

**Art. 5.59. May Require Statements**

The Board may require sworn statements from any insurance company or association affected by this law showing the pay roll reported to it and incurred losses by classifications and such other information which in the judgment of the Board may be necessary in determining proper classifications, rates and forms. The Board shall prescribe the necessary forms for such statements and reports, having due regard to the methods and forms in use in other states for similar purpose in order that uniformity of statistics may not be disturbed.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 5.60. Rating**

The Board shall determine hazards by classes and fix such rates of premium applicable to the payroll in each of such classes as shall be adequate to the risks to which they apply and consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt rating plans designed to encourage the prevention of accidents and to take account of the peculiar hazard and experience of individual risks, past and prospective, within and outside the State, and all other relevant factors, within and outside the State, provided such rate shall be fair and reasonable and not confiscatory as to any class of insurance carriers authorized by law to write Workmen's Compensation Insurance in this State. To insure the adequacy and reasonableness of rates, the Board shall take into consideration the experience, past and prospective, within and outside the State, and all other relevant factors, within and outside the State, gathered from a territory sufficiently broad to include the varying conditions of the industries in which the classifications are involved, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable, and adequate rates.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 9.]

**Art. 5.61. Adequate Reserves**

Nothing in this subchapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association, to prohibit any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association, issuing participating policies, provided no dividend to subscribers under the Workmen's Compensation Act shall take effect until the same has been approved

by the Board. No such dividend shall be approved until adequate reserve has been provided, said reserves to be computed on the same basis for all classes of companies or associations operating under this subchapter as prescribed under the applicable provisions of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.62. Board to Make Rules

The Board is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this subchapter as are necessary to carry out its provisions.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.63. Definitions

The words "Company" and "Association" used in this subchapter mean the Texas Employers Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any interinsurance exchange, or Lloyd's association authorized to write Workmen's Compensation Insurance in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.64. Cancellation of License

The Board shall cancel the license of any insurance company or association of persons to transact workmen's compensation insurance business in this State upon a second conviction of any officer or representative of such company or association for a violation of any provision of this subchapter relating to such business.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.65. Hearing Before Board

Any policyholder, insurance company, or association shall have the right to a hearing before the Board on any grievance occasioned by the promulgation of any classification, rate, rating plan or policy form by the Board; such hearing to be held in conformity with rules to be prescribed by the Board. No hearing shall suspend the operation of any classification, rate, rating plan or policy form unless the Board shall so order. Provided that any party aggrieved shall have the right to apply to any court of competent jurisdiction to obtain redress.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 64, ch. 50, § 10.]

*Amendment by Acts 1953, 53rd Leg., p. 716, ch. 279, § 2, see art. 5.65, post.*

#### Art. 5.65. Hearing Before Board

Any policyholder, applicant for insurance, insurance company or association shall have the right to a hearing before the Board on any grievance occasioned by the promulgation of any classification, rate, policy form, rule, regulation, order or other action by the Board under this Sub-chapter, or on any decision or order of the Administrative Agency established under Article 5.76 of this Code; such

hearing to be held in conformity with rules to be prescribed by the Board. No hearing shall suspend the operation of any classification, rate, policy form, rule, regulation, order or other action by the Board under this Sub-chapter or of any decision or order of said Administrative Agency, unless the Board shall so order. Provided that any party aggrieved shall have the right to apply to any court of competent jurisdiction to obtain redress.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 716, ch. 279, § 2.]

*Amendment by Acts 1953, 53rd Leg., p. 64, ch. 50, § 10, see art. 5.65, ante.*

#### Art. 5.66. Scope of Law

No provision of Chapter 5, subchapter C of this code, with regard to the fixing and promulgation of rates for fire insurance or the prescribing of fire insurance policies and forms shall be applicable to the fixing of compensation insurance classifications or the making of compensation insurance rates or the prescribing of compensation insurance policy forms; but the provisions of this subchapter shall be construed and applied independently of any other law or laws, or parts of laws, having to do with the matter of insurance rates and forms or of fixing the duties of the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.67. Additional Compensation

The necessary compensation of experts, the clerical force and other persons employed by the Board to carry out the purposes of this subchapter, and all necessary traveling expenses and such other expenses as may be necessarily incurred in carrying out such provisions shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Board. The total amount of all salaries and said other expenses shall not exceed the sum assessed and collected from companies and associations writing workmen's compensation insurance in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.68. Tax on Gross Premiums

To defray the expense of carrying out the provisions of this subchapter, there shall be annually assessed and collected by the State of Texas from each stock company, mutual company, reciprocal or interinsurance exchange, or Lloyds association writing Workmen's Compensation Insurance in this State, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of three-fifths (3/5) of one (1%) per cent of gross premiums collected by such company or association during the preceding year, under Workmen's Compensation policies written by said companies or associations covering risks in this State, according to the reports made to the Board as required by law. Said taxes when collected shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and moneys in his

hands, and shall be known as the Compensation Insurance Division Fund, said Fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures hereunder shall not exceed in the aggregate the sum assessed and collected from said companies and associations; and should there be an unexpended balance at the end of any year, the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the Treasury will be sufficient to pay all expenses of carrying out the provisions of this subchapter, which funds shall be paid out upon requisition made out and filed by a majority of the Board of Insurance Commissioners when the Comptroller shall issue warrants therefor. Any amount remaining in said Fund at the end of any year shall be carried over and expended in accordance with the provisions of this subchapter during the subsequent year or years. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.68-1. Penalty for Violation of Act

Any officer or representative of any insurance company or association authorized to write workmen's compensation insurance in this State, who shall violate any provision of the laws relating to such business contained in chapter 10, Title "Insurance" of the Revised Statutes,<sup>1</sup> relating to the State Insurance Commission and such business, shall be fined not less than one hundred nor more than five hundred dollars. [1925 P.C.]

<sup>1</sup> Civil Statutes, arts. 4878 to 4918 (now arts. 5.25 to 5.67).

#### SUBCHAPTER E. NATIONAL DEFENSE PROJECTS

#### Art. 5.69. National Defense Projects; Special Rates and Rating Plans for Workmen's Compensation, Motor Vehicle, and Other Casualty Insurance

The Board of Insurance Commissioners of Texas is hereby authorized and empowered to make and promulgate special rates and special rating plans for Workmen's Compensation, Motor Vehicle and other lines of Casualty insurance to be applicable only to the construction or operation of National Defense Projects in Texas, and to make such special rates and special rating plans separately for each class of insurance, or in combination of all such classes. The Board shall also have authority to make and promulgate such rules and regulations as may be necessary, proper or advisable in placing such rates and plans in effect. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.70. Special Rates and Forms for Fire, Windstorm, Other Types of Material Damage Insurance

The Board of Insurance Commissioners is hereby authorized and empowered to promulgate special

rates and forms for fire and windstorm insurance, and other types of material damage insurance required or used upon such National Defense Projects, and the Board may also promulgate rules and regulations incidental to said business and necessary to place its special rates and forms in effect. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.71. Cumulative; Exception to Existing Laws

This subchapter shall be cumulative of existing laws and applicable only to rates upon insurance in relation to National Defense Projects, and to the extent of such subject constitutes an exception to existing laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### SUBCHAPTER F. JOINT UNDERWRITING AND REINSURANCE; ADVISORY ORGANIZATIONS

#### Art. 5.72. Joint Underwriting or Joint Reinsurance

(a) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided.

(b) If, after a hearing, the Board of Insurance Commissioners finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this subchapter or with the laws applicable thereto, it may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of the applicable laws, and requiring the discontinuance of such activity or practice.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.73. Advisory Organizations

(a) Every group, association or other organization of insurers, whether located within or outside this State, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations but which does not make filings under any of the laws referred to in Article 5.75 of this subchapter, or which assists the Board of Insurance Commissioners in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, shall be known as an advisory organization.

(b) Every advisory organization shall file with the Board:

- (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation and of its by-laws, rules and regulations governing its activities;
- (2) a list of its members;
- (3) the name and address of a resident of this State upon whom notices or orders of the Board

or process issued at its direction may be served; and

(4) an agreement that the Board may examine such advisory organization in accordance with the provisions of Article 5.74 of this subchapter.

(c) If, after a hearing, the Board finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this subchapter or with the applicable laws referred to in Article 5.75 of this subchapter, it may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this subchapter, or with the applicable laws referred to in Article 5.75 of this subchapter, and requiring the discontinuance of such act or practice.

(d) No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the Board involving such statistics or recommendations issued under sub-section (c) of this article. If the Board finds such insurer or rating organization to be in violation of this sub-section it may issue an order requiring the discontinuance of such violation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.74. Examinations

The said Board may, as often as it may deem it expedient, make or cause to be made an examination of each group, association, or other organization referred to in Articles 5.72 and 5.73 of this subchapter. The reasonable costs of any such examination shall be paid by the group, association or other organization examined upon presentation to it of a detailed account of such costs. The officer, manager, agents and employees of such group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the Board may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.75. Scope of Subchapter

This subchapter applies to the kinds of insurance and to the insurers subject to Subchapters A, B, C, and D of Chapter 5 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 5.76. Reinsurance

Every company authorized to do business in Texas, regulated by this Act, and while in compliance with all laws applicable to it, will be eligible to reinsure any risk or part of a risk which it may

assume as a direct writer under authority of law. No such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the Board of Insurance Commissioners, and be by it approved, as protecting fully the interests of all the policyholders. This Article shall be cumulative of the provisions of this Code pertaining to reinsurance.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 15.]

*Another Article 5.76 was added by Acts 1953, 53rd Leg., p. 716, ch. 279, § 1 under Subchapter G. See Article 5.76, post.*

### SUBCHAPTER G. WORKMEN'S COMPENSATION AND LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION INSURANCE

#### Art. 5.76. Prevention of Injuries and Assignment of Rejected Risks

(a) The words "company" and "association" used in this Subchapter shall mean the Texas Employers' Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyds association authorized to write Workmen's Compensation and/or Longshoremen's and Harbor Workers' Compensation Insurance in this State. The word "Board" shall mean the Board of Insurance Commissioners of this State.

(b) For the purpose of carrying into effect the provisions of this Article, and with the approval of the Board, there shall be organized and maintained in this State, by insurance companies and associations as defined herein, an Administrative Agency to be known as "The Texas Workmen's Compensation Assigned Risk Pool" (hereinafter referred to as "Agency"), and every such company and association shall be a member of the Agency. Provided, that any company or association not engaged in writing such insurance for members of the public generally shall, upon being so certified by the Board and under such conditions and for such time as the Board may determine, be exempt from the provisions of this Article during the period of any such certification.

(c) It shall be the duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance, in the manner herein provided, for any risk under the Workmen's Compensation Law of Texas<sup>1</sup> and/or the Longshoremen's and Harbor Workers' Compensation Act,<sup>2</sup> or for any city, county or any other political subdivision, agency or department of the State authorized to provide workmen's compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any member of said agency. It shall be the further duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or

any other state in the same manner as if said policies had been written by servicing companies of this agency. With respect to said claims in existence at the time of said declaration of insolvency and paid by the agency, the agency shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workmen's compensation loss claimants of the insolvent insurance company. From and after the date the rules made and adopted under paragraph (e) have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any company or association.

(d) When any such rejected risk is called to the attention of said Agency and it appears that said risk is in good faith entitled to insurance, said Agency shall calculate the deposit premium therefor in accordance with the classifications and rates promulgated by the Board and upon payment thereof, the Agency shall designate a member whose duty it shall be to issue a policy on such form and for such limits of liability as shall be prescribed by the Board as provided in paragraph (g) of this Article, but the undertakings of said policy shall be entirely reinsured by all members of said Agency, and the liability of the member issuing said policy shall be limited to its liability as a reinsurer. On all such policies all members of said Agency shall be reinsurers as among themselves in proportion to the amount which the premiums on such insurance written in this State during the preceding calendar year by such member bears to the total such premiums written in this State during the preceding calendar year by all members of said Agency, and each said policy may be endorsed to reflect the plan of reinsurance hereinabove provided.

(e) The Agency shall make and adopt such rules as may be necessary to carry this Article into effect, subject to the approval of the Board.

(f) As a prerequisite to the writing of such insurance in this State every company and association, members of the Agency established pursuant to paragraph (b) of this Article, shall file with the Board written authority permitting said Agency to act in its behalf, as provided in this Article.

(g) The Board, in addition to the provisions prescribed by Subchapter (d) is hereby authorized and empowered to determine, fix, prescribe, promulgate, change, or amend policy forms, endorsements, rates, rating plans or minimum premiums normally applicable to a risk so as to apply to any and every risk assigned by said Agency such policy forms, endorsements, rates, rating plans and minimum premiums as are commensurate with the greater hazard of the risk, considering in connection therewith, the experience, physical or other conditions of such risk. In promulgating a rate or rates for any risk or risks assigned by said Agency the Board shall give due consideration to an appropriate allowable for losses,

claims expense, audit expenses, taxes, general administration expense, acquisition expense, inspection expense, an allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks.

(h) Any company or association may make and enforce reasonable rules for the prevention of injuries to employees of its policyholders or applicants for insurance under the Workmen's Compensation Act. For this purpose, representatives of any such company or association, and representatives of the Board, shall be granted free access to the premises of each such policyholder or applicant during regular working hours. Failure or refusal by any such policyholder or applicant to comply with any such reasonable rule for the prevention of injuries as shall be prescribed by the Agency, together with such other relevant factors, shall determine the issue of whether said policyholder or applicant in good faith is entitled to such insurance. Any policyholder or applicant aggrieved by any such rule for the prevention of injuries may, within thirty (30) days after notice of such rule, petition the Board for a review, and the Board, upon a hearing held after notice and in conformity with Article 5.65 of this Code, shall affirm, modify or annul such rule.

[Acts 1953, 53rd Leg., p. 716, ch. 279, § 1; Acts 1971, 62nd Leg., p. 1080, ch. 230, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Civil Statutes, art. 8306 et seq.

<sup>2</sup> 33 U.S.C.A. § 901 et seq.

*Another Article 5.76 was added by Acts 1955, 54th Leg., p. 413, ch. 117, § 15 under Subchapter F. See Article 5.76, ante.*

Sections 2 to 4 of the 1971 amendatory act provided:

"Sec. 2. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 3. If any word, phrase, clause, paragraph, sentence, part, portion or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and to all other persons and circumstances shall be valid and of full force and effect, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision and to this end the provisions of this Act are declared to be severable.

"Sec. 4. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only."

#### Art. 5.76-1. Accident Prevention Services

(a) Any insurer desiring to write workmen's compensation insurance in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services, to implement the program of accident prevention services. Each field safety representative shall be either a college graduate who shall

have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, a certified industrial hygienist, an individual with ten (10) years experience in occupational safety and health, or an individual who shall have completed a course of training in accident prevention services approved by the State Board of Insurance.

(b) The insurer shall render accident prevention services to its policyholders reasonably commensurate with the risks and exposures and experience of the subscriber's business. To provide such facilities, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives as provided in Subsection (a).

(c) If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insurer or are not being used by the insurer in a reasonable manner to prevent injury to employees of its policyholders, the fact shall be reported to the State Board of Insurance, and the Board shall order a hearing to determine if the insurer is not in compliance with this Article. If it is determined that the insurer is not in compliance, its license to write workmen's compensation insurance in Texas shall be revoked.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this Article after holding a public hearing on the proposed rules and regulations.

[Acts 1973, 63rd Leg., p. 192, ch. 88, § 9, eff. Sept. 1, 1973.]

#### SUBCHAPTER H. PREMIUM RATING PLANS

##### Art. 5.77. Premium Rating Plans; Powers of Board

The Board of Insurance Commissioners is hereby authorized and empowered to make or approve and promulgate premium rating plans designed to encourage the prevention of accidents, to recognize the peculiar hazards of individual risks and to give due consideration to interstate as well as intrastate experience of such risks for Workmen's Compensation, Motor Vehicle and other lines of Casualty Insurance to be applicable separately for each class of insurance, or in combination of two or more of such classes. Such plans may be approved on an optional basis to apply prospectively, or retrospectively and may include premium discount plans, retrospective rating plans or other systems, plans or formulas, however named, if the rates thereby provided are not excessive, inadequate or unfairly discriminatory. The Board shall also have authority to make or approve and promulgate such reasonable rules and regulations as may be necessary, not in conflict with provisions of this Act.

[Acts 1953, 53rd Leg., p. 64, ch. 50, § 1.]

2 West's Tex. Stats. & Codes—31

##### Art. 5.78. Consideration of All Relevant Factors

Before the Board of Insurance Commissioners approves class rates or rating plans, due consideration shall be given to all relevant factors to the end that no unfair discrimination shall exist in class rates or rating plans as they may affect risks of various size. [Acts 1953, 53rd Leg., p. 64, ch. 50, § 1a.]

##### Art. 5.79. Optional Selection and Application

If for any form of casualty insurance affected by this Act more than one rating plan is approved for optional selection and application, the selection of the plan shall rest with the applicant.

[Acts 1953, 53rd Leg., p. 64, ch. 50, § 1b.]

#### SUBCHAPTER I. MULTI-PERIL POLICIES

##### Art. 5.81. Multi-Peril Policies; Premium and Rate Adjustment Plans; Powers of Board

The State Board of Insurance is hereby authorized and empowered to make, approve, promulgate, and prescribe policy forms and rates for multi-peril policies of insurance. Such multi-peril policies and rates may be in respect to one or more of the perils that are otherwise separately and differently subject to regulation under the provisions of one or more of the other subchapters of Chapter 5 of this Code. In prescribing, promulgating, or approving policy forms and rates the board shall have the authority to designate the rating procedure which will be used in making the rates and forms and may choose the procedure under any of the subchapters of Chapter 5 for the purpose of determining forms and rates. In making rates on multi-peril policies the board may make a cumulative rate or premium or it may rate such multi-peril policies on the basis of the experience resulting from the experience under the multi-peril policy alone or the separate experience as respects each peril and coverage. The board may permit discounts from what the rates would otherwise be based on the actual savings in expense as is effected by the combining of coverages otherwise regulated under separate subchapters of this chapter and as respects any multi-coverage policy or "multi-peril" policy or any like combination of forms and rates. No such form shall include unnecessary coverages as determined by the board and no rate or premium authorized by this article shall be excessive, inadequate, or unfairly discriminatory. The board may authorize rate filings and such further discounts as may be warranted by provisions for inspection, premises operation standards, loss prevention requirements, or any other considerations and requisites as will improve the loss experience of the risk insured.

To provide for multi-peril policies and in order to preserve normal and accepted rating procedures, included as necessary level rating methods, and to provide mathematical consistency in rate making, any deductible provision and any rate or premium reduction shall be made as may be appropriate after

first arriving at a base rate or premium without the deductible. In arriving at base rates and premiums and in determining and evaluating the reported loss experience in the rate-making process, the method shall include provision that the amount of the deductible shall be added to any losses paid on policies containing such deductible as a proper and necessary function of calculating the base rate or premium, and as indicated, or in the event statistics are not available and adequate, there shall be added to the loss experience an amount which in the judgment of the board represents those losses occurring to the insureds which were less than the deductible and for which no insured loss was paid but which would have been paid except for the deductible provision.

Additionally, any deductible provision, or any provision to pay the excess of loss over a stated amount, or any percentage deductible shall be applied so as to determine the amount of loss as is calculated after deducting the amount of the deductible from the loss and after deducting the amount of the deductible from the policy limit, and the amount of loss payable under such deductible multi-peril policy shall be the lesser amount established by such calculations notwithstanding any other provision of the Insurance Code requiring certain policy language or any provision of an insurance contract to the contrary.

In carrying out the provisions of this article, the State Board of Insurance shall make, approve, and enforce such rules and regulations as in the best judgment of the board are necessary and desirable in carrying out the purposes of this article and in achieving the objectives hereof.

[Acts 1973, 63rd Leg., p. 162, ch. 83, § 1, eff. Aug. 27, 1973.]

Sections 2 and 3 of the 1973 Act provided:

"Sec. 2. If any portion of this Act, any part thereof, any paragraph, sentence, or other part shall be declared illegal or unconstitutional for any reason, such declaration shall not affect the validity of the remaining portions hereof; and in that connection the legislature hereby specifically declares that all portions hereof shall be severable and that the remaining portions hereof would have been enacted notwithstanding the absence of any such portion as may be declared illegal and unconstitutional.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby modified or repealed to the extent of such conflict, and in the event of such conflict, the provisions hereof shall prevail."

**CHAPTER SIX. FIRE AND MARINE COMPANIES**

Article

- 6.01. Board Shall Calculate Reserve on Fire Insurance.
- 6.02. Reserve for Ocean and Inland Marine Trip Insurance.
- 6.03. What May Be Insured.
- 6.04. Reduction of Capital Stock to Make Good Impairment of Surplus.
- 6.05. Capital Stock to Be Made Good.
- 6.06. Stockholder Failing to Pay.
- 6.07. New Stock and Minimum Surplus Made Up.
- 6.08. Holding Real Estate.
- 6.09. Repealed.
- 6.10. Repealed.
- 6.11. Annual Statement.
- 6.12. Details of Annual Statement.
- 6.13. Policy a Liquidated Demand.
- 6.14. Breach by Insured.
- 6.15. Interest of Mortgagee or Trustee.
- 6.16. Reinsurance.

**Art. 6.01. Board Shall Calculate Reserve on Fire Insurance**

(1) Every company doing fire insurance business in this state shall maintain a re-insurance or unearned premium reserve on all policies in force.

(2) The Board may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting re-insurance in accordance with the provisions of Article 6.16 of the Texas Insurance Code as computed on each respective risk from the policy's date of issue. If the Board does not so require, the portions of the gross premium in force, less re-insurance in accordance with the provisions of Article 6.16 of the Texas Insurance Code, to be held as a re-insurance or unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserved for Unearned Premium
1 year or less	1/2
2 years	1st year 3/4
	2nd year 1/4
3 years	1st year 5/6
	2nd year 1/2
	3rd year 1/6
4 years	1st year 7/8
	2nd year 5/8
	3rd year 3/8
	4th year 1/8
5 years	1st year 9/10
	2nd year 7/10
	3rd year 1/2
	4th year 3/10
	5th year 1/10
Over 5 years	pro-rata

(3) In lieu of computation according to the foregoing table, the Board may require or the insurer at its option may compute all of such reserves on a quarterly, monthly or more frequent pro-rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 637, ch. 291, § 1.]

**Art. 6.02. Reserve for Ocean and Inland Marine Trip Insurance**

The entire amount of premiums on ocean and inland marine trip risks not terminated shall be deemed unearned, and the insurer shall carry a reserve equal to one hundred percent of such premiums.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 637, ch. 291, § 1.]

**Art. 6.03. What May Be Insured**

It shall be lawful for any insurance company doing business in this State under the proper certificate of authority, except a life insurance company, to insure houses, buildings and all other kinds of property against loss or damage by fire; to take all

kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or respondentia; to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have on bottomry or respondentia; and generally to do and perform all other matters and things proper to promote these objects; to insure automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any of the risks of fire, lightning, windstorms, hail storms, tornadoes, cyclones, explosions, transportation by land or water, theft and collisions, upon filing with the Board notification of their purpose to do so.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 6.04. Reduction of Capital Stock to Make Good Impairment of Surplus**

Whenever the minimum surplus of any fire, fire and marine, or marine insurance company of this State becomes impaired to a greater extent than that provided by Section 5 of Article 1.10, the Board may, in its discretion, permit the said company by amendment to charter as provided by Article 2.03, to reduce its capital stock and par value of its shares in proportion to the extent of permitted impairment; provided that the par value of said shares shall not be reduced below the sum provided by Section 1 of Article 2.07. In fixing such reduced capital, no sum exceeding \$125,000.00 shall be deducted from the assets and property on hand, which shall be retained as surplus assets. No part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company or its surplus in any case be reduced to an amount less than the minimum capital and the minimum surplus provided by Article 2.02 of this Code, subject to the provisions of Section 5 of Article 1.10 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 16.]

#### **Art. 6.05. Capital and Surplus to Be Made Good**

Any fire, marine or inland insurance company having received notice from the Board to make good any impairment of its required capital or to make good its surplus within 60 days as provided by Section 5 of Article 1.10 shall forthwith call upon its stockholders for such amounts as shall make its capital and its surplus equal to the amount required by Article 2.02, subject to the provisions of said Section 5 of Article 1.10 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 17.]

#### **Art. 6.06. Stockholder Failing to Pay**

If any stockholder of such company shall neglect or fail to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said Board shall approve, it shall be lawful for said company to require the

return of the original certificate of stock held by such stockholder, and in lieu thereof to issue a new certificate for such number of shares as such defaulting stockholder may be entitled to in the proportion that the ascertained value of the funds of said company, calculated without inclusion of any money or property paid by stockholders in response to such call, may be found to bear to the total of the original capital and the minimum surplus of said company as required by Article 2.02; as qualified by the provisions of Section 5 of Article 1.10 of this Code, the value of such shares for which new certificates are issued shall be ascertained under the direction of said Board and the company shall pay for the fractional parts of shares.

Any interested person may pay part or all of the amount of the deficit resulting from such default and the company shall issue to each such person a stock certificate for the number of shares to which he is entitled, such certificate to be for the number of shares in proportion to the whole number of forfeited shares which the payment made by the recipient of the new stock certificate bears to the deficit which resulted from such forfeited shares. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 18.]

#### **Art. 6.07. New Stock and Minimum Surplus Made Up**

It shall be lawful for such company upon compliance with Article 2.03 of this Code to create new stock and dispose of the same according to law and to issue new certificates therefor. Said new stock shall be sold for an amount sufficient to make up any impairments of its required minimum capital and to make up the surplus of the company as provided in Article 2.02 of this Code as qualified by Section 5 of Article 1.10, without impairment of the capital of the company.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 19.]

#### **Art. 6.08. Holding Real Estate**

No such company shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business;

2. Such as shall have been mortgaged to it in good faith by way of security of loans previously contracted or for money due;

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due;

4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts;

5. Mineral and royalty interests reserved upon the sale of land acquired under Subdivi-

sions 2, 3, and 4 of this Article 6.08 of this Code before January 1, 1942.

All real estate acquired under authority of the above paragraphs of this Article numbered 2, 3, and 4, or either of them, shall be subject to the provisions of Article 8.19 of this Code.

No more than thirty-three and one-third per cent (33⅓%) of its admitted assets shall be invested by such company in real estate, and none of its capital and minimum surplus may be so invested, except to the extent that the foregoing limitation shall not apply to real estate held under authority of the above paragraphs of this Article numbered 2, 3, 4, and 5, or either of them.

The value of real estate mentioned in paragraph numbered 1 above shall be appraised by two (2) or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, when such real estate is hereafter acquired or when amendment to charter is applied for, the reasonable cost and expense of such appraisal to be paid by the insurance company to the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 20; Acts 1961, 57th Leg., p. 1049, ch. 467, § 1.]

**Arts. 6.09, 6.10. Repealed by Acts 1963, 58th Leg., p. 976, ch. 399, § 1, eff. Aug. 23, 1963**

**Art. 6.11. Annual Statement**

The president or vice-president and secretary of each fire, marine or inland insurance company doing business in this State, annually, on the first day of each year, or within sixty days thereafter, shall prepare under oath and deposit with the Board a full, true and complete statement of the condition of such company on the last day of the month of December preceding.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 6.12. Details of Annual Statement**

Such annual statement shall exhibit the following items and facts:

1. The name of the company and where located.
2. The names and residence of the officers.
3. The amount of the capital stock of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: the real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this State, shall accompany such statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents; the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with

the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of any stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value; the value of all electronic machines, constituting a data processing system or systems, and all other office equipment, furniture, machines and labor-saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute less than five per cent (5%) of the otherwise admitted assets of such company; and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars (\$2,000), to qualify hereunder. The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and labor-saving devices as used herein, and provide for the maximum period for which each such class of equipment may be amortized; the value of all such property as determined hereunder and under the regulations herein provided for shall be deemed to be an admitted asset for all purposes.

6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required as the lawful reserve on all unexpired risks computed in the manner provided elsewhere in this Code; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same.

7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses, and other charges of officers, agents, clerks, and other employees; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses, such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one (1) risk, naming the risk.

10. The amount of risks written during the preceding year.

11. The amount of risks in force having less than one (1) year to run.

12. The amount of risks in force having more than one (1) and not over three (3) years to run.

13. The amount of risks having more than three (3) years to run.

14. Whether or not dividends are declared on premiums received for risks not terminated.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 637, ch. 291, § 1; Acts 1965, 59th Leg., p. 1615, ch. 691, § 1.]

#### Art. 6.13. Policy a Liquidated Demand

A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property.

On and after January 1, 1951, the provisions of the preceding paragraph of this article shall be incorporated verbatim in each and every fire insurance policy hereafter issued as coverage on any real property in this State; and it shall be the duty of the Board of Insurance Commissioners, by proper order and procedure, to compel compliance with this statute.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 6.14. Breach by Insured

No breach or violation by the insured of any warranty, condition or provision of any fire insurance policy, contract of insurance, or applications therefor, upon personal property, shall render void the policy or contract, or constitute a defense to a suit for loss thereon, unless such breach or violation contributed to bring about the destruction of the property.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 6.15. Interest of Mortgagee or Trustee

The interest of a mortgagee or trustee under any fire insurance contract hereafter issued covering any

property situated in this State shall not be invalidated by any act or neglect of the mortgagor or owner of said described property or the happening of any condition beyond his control, and any stipulation in any contract in conflict herewith shall be null and void.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 6.16. Reinsurance

1. No insurance company incorporated under the laws of the United States or of any State thereof and authorized to do business in this State in the writing of fire and allied lines of insurance as those terms may now or hereafter be defined by statute, by ruling of the Board of Insurance Commissioners of Texas, hereinafter called the "Board," or by lawful custom, shall expose itself to any loss or hazard on any one (1) risk, except when insuring cotton in bales, and grain, to an amount exceeding ten (10%) per cent of its paid-up capital stock and surplus, unless the excess shall be reinsured by such company in another solvent insurer. Similarly, no insurance company incorporated under a jurisdiction other than that of the United States or a state thereof and authorized to do business in this State in the writing of said lines of insurance shall expose itself to any loss or hazard on any one (1) risk, except when insuring cotton in bales, and grain, to an amount exceeding ten (10%) per cent of the company's deposit with the statutory officer in the state through which the company gains admission to the United States, together with ten (10%) per cent of the other surplus to policyholders of the company's United States Branch, unless the excess shall be reinsured by such company in another solvent insurer.

2. Any insurance or reinsurance company authorized to transact insurance or reinsurance within this State as to lines of insurance defined in Section 1 hereof, may reinsure the whole or any part of an individual risk in another solvent insurer. The consent of the Board shall be obtained when an insurer reinsures all of its liability on its risks within any class of insurance defined in Section 1 hereof with another insurer not authorized to do business in Texas.

3. No credit for the reserve for unearned premium liability on such reinsurance shall be taken by the ceding insurer unless the assuming insurer is licensed to do business in this State, except that a ceding insurer domiciled in Texas may reinsure the whole or any part of risk or risks located without the State of Texas, the assuming insurer to be a solvent insurer duly licensed in the State or district where such reinsured risk or risks be located; but provided further that credit for reserves for unearned premium liability and loss reserves may be taken on such reinsurance if the assuming insurer is a group of alien individual unincorporated insurers writing insurance on the so-called Lloyd's plan, and is licensed to do business in a state of the United States and does maintain funds held in trust for the protection of United States policy holders and beneficiaries in a bank or trust company organized under the laws of

the United States of America or any state thereof which is a member of the Federal Reserve System and such trust funds amount to at least \$50,000,000, invested in such assets as are enumerated under Article 2.08 of the Texas Insurance Code.

4. The Board shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as it may direct.

5. As to the risk or classes of risks mentioned in Section 1 hereof, no credit shall be allowed to any ceding insurer for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1950, as an admitted asset or as a reduction of liability, unless by the terms of a written reinsurance agreement the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under any policy or contract reinsured without diminution because of the insolvency of the ceding insurer, nor unless under the contract or contracts of reinsurance the liability of such reinsurance is assumed by the assuming insurer or insurers as of the same effective date. Such reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of a pendency of a claim against the insolvent ceding insurer on the policy reinsured within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor. Subject to court approval, the expense thus incurred by the assuming insurer shall be chargeable against the insolvent ceding insurer as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

Where two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding company.

6. Any licensed company may act in the obtaining of reinsurance from an insurer not licensed to do business in Texas through any of its officers or appointed representatives.

7. "Assuming insurer" means that insurer which under a contract of reinsurance incurs to another insurer called the "ceding insurer," an obligation of which the performance is contingent upon the incurring of liability or loss by the ceding insurer under its contract or contracts of insurance made with third persons.

8. None of the provisions of this article shall prohibit the making of contracts to protect against

catastrophe losses. Any ceding licensed insurer shall have the right to make such contracts with an assuming non-licensed insurer and shall not be required to make the report thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1967, 60th Leg., p. 278, ch. 130, § 1, eff. May 5, 1967.]

## CHAPTER SEVEN. SURETY AND TRUST COMPANIES

### Article

7.01. Venue of Suit on Bond; Service.

7.02. Withdrawal of Unnecessary Deposits.

7.03-7.18. Repealed.

7.19-1. Bond of Surety Company.

7.20-1. Bail Bond Certificates Issued by Automobile Clubs; Sureties.

### Art. 7.01. Venue of Suit on Bond; Service

If any suit shall be instituted upon any bond or obligation of any insurance company licensed in this State and having authority to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations, or upon any bond or bonds that may be required to be filed in any judicial proceedings, or to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the State and municipal corporations or counties or between corporations and individuals, or on any bond or bonds that may be required of any state official, district official, county official or official or any school district or of any municipality, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause. Service therein shall be had, either upon the attorney of said company, by law required to be appointed, or upon the Chairman of the State Board of Insurance, and such service shall be to all intents valid and effectual as service upon said company. Such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing of any business in any county shall be deemed an acceptance of the provisions of this Act.

[Acts 1959, 56th Leg., 2nd C.S., p. 159, ch. 39, § 1.]

### Art. 7.02. Withdrawal of Unnecessary Deposits

When two or more companies authorized to write fidelity, guaranty and surety insurance in the State of Texas merge or consolidate, and, incident to such merger or consolidation, enter into a total reinsurance contract by which the merged or ceding company is dissolved, and its assets acquired and liabilities assumed by the new or surviving company, the Commissioner of Insurance, upon finding that the contracting companies have on deposit with the State Treasurer two or more deposits made for the same or similar purposes under either former Article 7.03 (repealed by Acts 1957, 55th Legislature, Regu-

lar Session, Chapter 388, p. 1162) or Article 8.05 of the Insurance Code of Texas, shall authorize the State Treasurer to retain for a single purpose only the deposit of greater or greatest amount and value and to permit the new or surviving reinsuring company, upon proper showing that there is such duplication of deposits and that the new or surviving company is the owner thereof, to withdraw any or all duplicate or excessive deposits.

[Acts 1971, 62nd Leg., p. 1904, ch. 569, § 1, eff. June 1, 1971.]

Former article 7.02 was repealed by Acts 1957, 55th Leg., p. 1162, ch. 388, § 1.

**Arts. 7.03 to 7.18. Repealed by Acts 1957, 55th Leg., p. 1162, ch. 388, § 1**

**Art. 7.19-1. Bond of Surety Company**

Sec. 1. Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company duly qualified to do business in this state; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guarantee when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation.

Provided, however, that any municipality may require in any specifications for work or supplies, on which sealed bids are required, that any corporate surety tender shall designate, in a manner satisfactory to it, an agent resident in the county of such municipality to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

[Acts 1959, 56th Leg., p. 146, ch. 87.]

**Art. 7.20-1. Bail Bond Certificates Issued by Automobile Clubs; Sureties**

Any insurance company which has qualified to transact fidelity and surety insurance business in this state may, in any year, become surety in an amount not to exceed \$200 with respect to each bail bond certificate issued in such year by an automobile club, duly licensed to transact business within this state, or by any truck and bus association incorporat-

ed in this state. Bail bond certificate means a printed card or other certificate issued by an automobile club, authorized to transact business within this state, or by any truck and bus association incorporated in this state to any of its members, which is signed by such member, and contains a printed statement that a fidelity and surety company authorized to do business in this state guarantees the appearance of the person whose signature appears on the card or certificate, and that such company will, in the event of the failure of said person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed \$200.

[Acts 1969, 61st Leg., p. 2033, ch. 697, § 1, eff. Sept. 1, 1969.]

## CHAPTER EIGHT. GENERAL CASUALTY COMPANIES

### Article

- 8.01. May Incorporate.
- 8.02. Articles of Incorporation.
- 8.03. Organization.
- 8.04. Officers and Records.
- 8.05. Capital and Deposits.
- 8.06. Powers.
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- 8.22. Service of Process.
- 8.23. Decrease of Stock.
- 8.24. Mexican Casualty Insurance Companies; Policies in Force While Insured Persons or Property are in Mexico; Requirements for Issuance in State; Premium Tax; Rates; Enforcement.

**Art. 8.01. May Incorporate**

Any three or more persons, a majority of whom are residents of this State, may associate in accordance with the provisions of this chapter and form an incorporated company for any one or more of the following purposes:

1. To insure any person against bodily injury, disablement or death resulting from accident and against disablement resulting from disease.
2. To insure against loss or damage resulting from accident to or injury sustained by an employee or other person for which accident or injury the assured is liable.
3. To insure against loss or damage by burglary, theft or housebreaking.
4. To insure glass against breakage.
5. To insure against loss from injury to person or property which results accidentally from

steam boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to insure boilers, elevators, electrical devices, engines, machinery and appliances.

6. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

7. To insure against loss resulting from accidental damage to automobiles or caused accidentally by automobiles.

8. To insure against loss or damages resulting from accident to or injury suffered by any person for which loss and damage the insured is liable; excepting employers liability insurance as authorized under Subdivision 2 of this article.

9. To insure persons, associations or corporations against loss or damage by reason of giving or extending of credit.

10. To insure against loss or damage on account of circumstances upon, or defects in the title to, real estate, and against loss by reason of the nonpayment of the principal or interest of bonds, mortgages or other evidences of indebtedness.

11. To write marine insurance in which may be included the hazards and perils incident to war.

12. To insure against any other casualty or insurance risk specified in the articles of incorporation which may be lawfully made the subject of insurance, and the formation of a corporation for issuing against which is not otherwise provided for by this article, excepting fire and life insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.02. Articles of Incorporation

Such persons shall associate themselves together by written articles of incorporation for the purpose of forming an accident or casualty insurance company, which articles shall specify the general object of the company, and the proposed duration of the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.03. Organization

When such articles of incorporation are filed with the Board of Insurance Commissioners, together with an affidavit made by two or more of its incorporators, that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of Twenty-five (\$25.00) Dollars, the Board shall record the same in a book kept for that purpose, and upon receipt of a fee of One (\$1.00) Dollar it shall furnish a certified copy of the same to the incorporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company and elect a board of directors composed of stockholders, which board shall have full control and

management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.04. Officers and Records

The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer and such number of directors not less than three who shall continue in office for the period of one year from the date of filing articles of incorporation, and until their successors shall be duly chosen and qualified. They shall open books for the subscriptions of stock in the company at such times and places as they shall deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.05. Capital and Deposits

Only companies organized and doing business under the provisions of this Chapter shall be subject to its provisions. Such companies shall have not less than the minimum capital and the minimum surplus applicable to casualty, fidelity, guaranty, surety and trust companies as set out in Article 2.02 of this Code. Such a company shall be authorized to transact all and every kind of insurance specified in the first Article of this Chapter. At the time of incorporation all of said capital and surplus shall be in cash. The capital and minimum surplus required of said company as provided in Article 2.02 of this Code shall, following incorporation and the issuance by the Board to said company of a certificate authorizing it to do business, be invested as provided in Article 2.08 of this Code. All other funds of said corporation in excess of its capital and minimum surplus shall be invested by such company as provided in Article 2.10 and in Article 6.08 of this Code. Upon the granting of the charter to said corporation in the mode and manner provided in Article 2.01 and Article 2.02 of this Code, and upon the deposit of the sum of \$50,000.00 of securities of the kind described in Article 2.10 of this Code or in cash with the State Treasurer, the Board shall issue to said company a certificate authorizing it to do business.

No part of the capital or surplus paid in shall be loaned to any officer of said company.

In the event any such company shall be required by the law of any other State, country or province as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country or province, or with the State Treasurer of this State, any securities or cash in excess of the said deposit of \$50,000.00 hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the

protection of policyholders of the company. Any deposit so made to meet the requirements of any other State, country or province shall not be withdrawn by the company except upon filing with the Board evidence satisfactory to it that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 21.]

#### Art. 8.06. Powers

A corporation organized or doing business under the provisions of this law shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and in the name of the corporation or by a trustee chosen by the board of directors, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees, or managers, make by-laws and amendments thereto not inconsistent with the laws or the Constitution of this State or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporation, together with the qualifications and duties of the same and fixing the term of office. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.07. Annual Statement

The president, vice president and secretary or a majority of directors or trustees of any such company shall annually, on the first day of January or within sixty (60) days thereafter, prepare and deposit in the office of the Board a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

1. Name and where located, (a) names of officers, (b) the amount of capital stock, (c) the amount of capital stock paid in.

2. Assets, (a) the value of real estate owned by said company, (b) the amount of cash on hand, (c) the amount of cash deposited in bank or trust company, (d) the amount of bonds of the United States, and all other bonds, giving names and amounts with par and market values of each kind, (e) the amount of loans secured by first mortgage on real estate, (f) the amount of all other bonds, loans and how secured, with rate of interest, (g) the amount of notes given for unpaid stock and how secured, (h) the amount of interest due and unpaid, (i) the value of all electronic machines, constituting a data processing system or systems, and all other office equipment, furniture, machines and labor-

saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute less than five per cent (5%) of the otherwise admitted assets of such company; and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars (\$2,000), to qualify hereunder, (j) all other credits or assets. The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and labor-saving devices as used in (i) above, and provide for the maximum period for which each such class of equipment may be amortized; the value of all such property as determined hereunder and under the regulations herein provided for shall be deemed to be an admitted asset for all purposes.

3. Liabilities, (a) the amount of losses due and unpaid, (b) the amount of claims for losses unadjusted, (c) the amount of claims for losses resisted.

4. Income during the year, (a) the amount of fees received during the year, (b) the amount of interest received from all sources, (c) the amount of receipts from all other sources.

5. Expenditures during the year, (a) the amount paid for losses, (b) the amount of dividends paid to stockholders, (c) the amount of commissions and salaries paid to agents, (d) the amount paid to officers for salaries, (e) the amount paid for taxes, (f) the amount of all other payments or expenditures.

6. Miscellaneous, (a) the amount paid in fees during the year, (b) the amount paid for losses during the year, (c) the whole amount of insurance issued and in force on the 31st day of December of the previous year.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 1615, ch. 691, § 2.]

#### Art. 8.08. Additional Information

The Board is authorized to amend the form of statement and to exact such additional information as it may think necessary in order that a full exhibit of the standing of such companies may be shown. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.09. Failure of Duty

Upon the failure of any company to make such deposit or to file the statement in time, the Board shall notify such company to issue no new insurance until the law is complied with, and it shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.10. Examination**

All of the provisions of Article 1.15 and Article 1.16 relative to the examination of companies shall apply to companies formed under this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 22.]

**Art. 8.11. Revoking Certificate**

If the Board shall at any time from the report of examination determine that such company has not complied with any provision of this law, said Board shall revoke its certificate of authority to do business in this State, and shall refer the facts to the Attorney General, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. In no other way can the Board or any other person restrain or interfere with the prosecution of business of any company doing business under the provisions of this chapter, except in actions by judgment creditor or in proceedings supplementary to execution.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.12. Change of Securities**

Such companies shall have the right at any time to change their securities on deposit with the State Treasurer by substituting for those withdrawn a like amount in other securities of the character provided for in this law.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.13. Increase of Capital**

Any such company may increase its capital stock at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders, and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for four (4) consecutive weeks. No increase of capital stock in less amount than Fifty Thousand (\$50,000.00) Dollars is hereby authorized.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.14. Dividends**

The directors of any such company shall not make any dividends except in compliance with Article 21.31 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 642, ch. 295, § 1.]

**Art. 8.15. Interest on Deposits**

The State Treasurer shall permit companies having securities on deposit with him under the provisions of this law to collect the interest as the same may become due, and shall deliver to such companies, respectively, the coupons or other evidences of interest pertaining to such deposits. Upon failure of any company to deposit additional security as called for by the Board, or pending any proceedings to close up or enjoin it, the State Treasurer shall collect the interest as it becomes due and hold the same as

additional security in his hands belonging to such company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.16. Penalty**

Any such company organized or doing business under this code without a certificate as provided for in this chapter shall forfeit One Hundred (\$100.00) Dollars for every day it continues to write new business in this State without such certificate.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.17. Suits for Penalties**

Suits to recover any penalty provided for in this chapter shall be instituted in the name of the State of Texas, by the Attorney General or by a district or county attorney under his direction, either in the county where the principal office is situated, or in Travis County, Texas. Such penalties, when recovered, shall be paid into the State Treasury for the use of the school fund.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 8.18. Real Estate**

Such company shall be subject to the provisions of Article 6.08 of this Code; and no such company shall be permitted to purchase, hold or convey real estate, except for the purposes and in the manner set forth in said Article.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 23; Acts 1961, 57th Leg., p. 1049, ch. 467, § 3.]

**Art. 8.19. Sale of Real Estate**

All real estate so acquired, except as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of their business and except interests in minerals and royalty reserved upon the sale of land acquired under Subdivisions 2, 3, and 4 of Article 6.08 of this Code prior to January 1, 1942, shall, except as hereinafter provided, be sold and disposed of within ten (10) years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the Board that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the Board shall direct in said certificate.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1961, 57th Leg., p. 1049, ch. 467, § 2.]

**Art. 8.20. Certificate of Authority**

The Board upon due proof by a company organized under the provisions of this law, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under the law, which certificate or a copy thereof shall be evidence of such qualifications and of such compa-

ny's authority to transact business authorized by this chapter, and of its solvency and credits.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

*[Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.]*

#### Art. 8.21. Fees

The Board shall charge for filing the annual statement required by this chapter, a fee of Twenty (\$20.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.22. Service of Process

Process in any civil suit against any such company organized under the laws of this State may be served only on the president, or any active vice president or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company, during business hours.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.23. Decrease of Stock

Any such company may decrease its capital stock at any time after the intention to so decrease the capital stock shall have been ratified by a majority vote of the stockholders, and after notice of such purpose has been published in some newspaper of general circulation for a period of four consecutive weeks.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 8.24. Mexican Casualty Insurance Companies; Policies in Force While Insured Persons or Property are in Mexico; Requirements for Issuance in State; Premium Tax; Rates; Enforcement

Any insurance carrier lawfully organized under the laws of the Republic of Mexico, or under the laws of any state thereof, and duly authorized by such laws and by its charter or articles of association and by current license of the appropriate insurance regulatory authority of such Republic or any state thereof to underwrite risks of the kinds and in the circumstances hereinafter mentioned, may issue in the State of Texas, under license of the Board of Insurance Commissioners of Texas, policies of insurance affording any and all kinds of automobile coverage, accident insurance and/or other casualty coverage, upon persons and/or personal property, to be in force only while such persons and/or personal property shall be physically within the boundaries of the Republic of Mexico, by complying with the following requirements:

(a) Such insurance carrier shall file with the Board of Insurance Commissioners of the State of Texas (called Board) a written application for certificate to do business in this State, accompanied by a correct English translation of its charter and by-laws, duly certified by two of its principal officers and by the insurance regulato-

ry officials under whose supervision it operates in the Republic of Mexico, and of all of its policy forms, application forms, claim forms, and other forms of every nature which it uses or expects to use in underwriting the coverage hereby authorized to be written in Texas, all of which shall be subject to the approval of such Board.

(b) Before admission, and annually thereafter, such carrier shall also file with such Board a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs and financial condition by the insurance regulatory authorities under which it operates in Mexico.

(c) Such carrier shall deposit with the Treasurer of the State of Texas at least Twenty-five Thousand (\$25,000.00) Dollars in lawful money of the United States or in securities eligible for other casualty insurers licensed in Texas and approved by such Board, which deposit shall be liable for all lawful claims and final judgments against such insurance carrier, including taxes due the State of Texas, and policy claims and other debts and obligations incurred in the course of operations hereunder as provided herein, and such deposit shall be kept replenished from time to time with like cash or approved securities to maintain a minimum total deposit of Twenty-five Thousand (\$25,000.00) Dollars. Such deposit or the unincumbered balance thereof shall be returned to such carrier with approval of such Board upon withdrawing from the business authorized hereby and upon a showing to such Board that all of its policies written in Texas hereunder have expired or have been cancelled and that all of its claims and obligations upon policies written in this State which would constitute lawful charges against such deposits have been satisfied.

(d) Such carrier shall file with the Board a power of attorney, in a form designated by the Board, designating an agent or attorney in fact upon whom legal process may be served within this State, which appointment shall continue until revoked and a successor duly appointed by the carrier, and further authorizing service of legal process upon the Chairman of the Board of Insurance Commissioners of Texas and his successors in office as alternate attorney in fact for such carrier upon whom service of process may be had in event such process cannot be served upon the designated agent or attorney in fact for service as herein provided, upon suits for any alleged liability incurred in operations of the carrier pursuant to this law, with like effect as if such process had been served personally upon the appropriate persons, representatives or officials of such carrier within its home jurisdiction in the Republic of Mexico. In event process shall be served upon the Chairman of the Board,

as provided above, he shall immediately give written notice thereof to such carrier and shall forward such process by registered mail, postage prepaid, and properly addressed to the president of such carrier at its home office as furnished to the Board; and no judgment by default shall be taken in any such cause until after the expiration of forty (40) days after said process and notice shall have been received at the home office of such carrier. Until rebutted, the presumption shall obtain that such notice and process was received at the home office of the carrier on the fifth (5th) day after being deposited in the mail at Austin, Texas, as herein provided. The State Treasurer, upon the approval of the Board, shall pay from the deposit required herein any unsatisfied final judgment obtained against such carrier in any court of competent jurisdiction in Texas based upon such substituted service as authorized herein.

(e) Such carrier shall pay the State of Texas annually a premium or occupation tax based solely upon its gross premium receipts from insurance policies issued by it in Texas which cover resident citizens of Texas or property or risks principally domiciled or located in this State, as shown by reports made to the Board each year, upon the same percentage rate, and in the same manner, as other licensed insurance carriers in Texas writing accident and casualty coverage. Each such carrier likewise shall pay such other maintenance fees, charges and taxes and upon the same basis as other licensed insurance carriers writing accident and casualty coverage in Texas are required by law to pay; and shall make the same reports as are required of such other insurance carriers, but in such adapted forms as may be prescribed by the Board of Insurance Commissioners for such purposes.

(f) The coverage hereby authorized shall be underwritten only at rates prescribed or approved from time to time by such Board.

(g) Such Board shall have the authority to examine at any or all times, at the expense of such carrier, the affairs and condition and all books and records of such carrier for the purpose of ascertaining its financial condition and solvency, and its compliance with the applicable laws of this State and of its home jurisdiction.

(h) Such carrier shall file in English a document executed by its officials expressly accepting the terms of this article and agreeing that such Board may at any time in its lawful discretion revoke, suspend or refuse to grant or renew the license of such Board to such carrier to conduct in Texas the business hereby authorized, upon a determination by such Board that it is insolvent or in dangerous financial condition, or that it has violated any applicable law of this State or of its home jurisdiction.

(i) It shall underwrite business in Texas only through its resident Texas agents thereunto

duly authorized by it in writing and duly licensed by such Board under the provisions of Article 21.14 of this code, as the same now exists or as it may be amended hereafter, and the license issued to such Texas agents shall specially authorize them to write for such foreign carriers complying herewith the risks authorized hereby.

(j) The State Board of Insurance shall have authority to suspend or revoke the certificate of authority of any insurance carrier authorized to do business in Texas under this Article, if the Board, after notice and opportunity for hearing, shall find that such carrier has systematically, with neglect and with willful disregard, failed to comply with its obligations derived from the contracts of insurance, and the laws applicable thereto, as contained in policies issued in the State of Texas.

Any carrier aggrieved by an order of the Board hereunder shall be entitled to appeal therefrom pursuant to the provisions of Article 1.04(f) of the Insurance Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1969, 61st Leg., p. 1637, ch. 509, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 3039, ch. 1003, § 1, eff. June 15, 1971.]

## CHAPTER NINE. TEXAS TITLE INSURANCE ACT

*Chapter 9, Texas Insurance Code, relating to title insurance companies, was amended and revised by Acts 1967, 60th Leg., p. 490, ch. 219, § 1, effective October 1, 1967.*

### Article

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#### Art. 9.01. Short Title

This Act shall be known and may be cited as the "Texas Title Insurance Act."

[Acts 1967, 60th Leg., p. 490, ch. 219, § 1, eff. Oct. 1, 1967.]

Acts 1967, 60th Leg., p. 490, ch. 219, which amended and revised Chapter 9 of the Texas Insurance Code in section 1 thereof, provides in sections 2 and 3:

"Sec. 2. Severability Provision. If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

"Sec. 3. Effective Date. This Act shall become effective on October 1, 1967."

#### Art. 9.02. Definitions

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of insuring titles to real property, any title insurance company organized under the laws of another state or foreign government meeting the requirements of this Act and holding a certificate of authority to transact business in Texas and any domestic or foreign company having the

power and authority to insure titles to real estate within this state and which meet the requirements of this Act.

(d) "Commissioner" means the Commissioner of Insurance of the State of Texas.

(e) "Board" means the State Board of Insurance of the State of Texas.

(f) "Title Insurance Agent" means a person, firm, association, or corporation owning or leasing and controlling an abstract plant as defined by the Board, or as a participant in a bona fide joint abstract plant operation as defined by the Board, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.

(g) "Escrow Officer" means an officer or employee of a title insurance agent whose duties include any or all of the following: (1) countersigning title insurance policies, commitments and binders; or (2) supervising the preparation and delivery of title insurance policies, commitments and binders; or (3) receiving, handling, or disbursing escrow funds; provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition.

(h) "Foreign Title Insurance Company" means a title insurance company organized under the laws of any jurisdiction other than the State of Texas.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board from time to time and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that in its opinion will be adequate for use in insuring titles, keeping in mind the safety and protection of the policyholders.

[Acts 1967, 60th Leg., p. 490, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.03. May Incorporate

Private corporations may be created for the following named purposes:

- (1) To compile and own, or to acquire and own, records or abstracts of title to lands and interests in land; and to insure titles to lands or interests therein, both in Texas and other states of the United States, and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of incumbrances upon or defects in the title to such lands or interests therein; and in transactions in which title insurance is to be or is being issued, to supervise or approve the signing of legal instruments (but not the preparation of such instruments) affecting land titles, disbursement of funds, prorations, delivery of legal instruments, closing of deals, issuance of commitments for title insurance specifying the requirements for title insurance and the defects in title necessary to be cured or corrected; provided, however, that nothing herein contained

shall authorize such corporation to practice law, as that term is defined by the courts of this state, and in the event of any conflict herein, this clause shall be controlling.

Such corporations may also exercise the following powers by including same in the charter when filed originally, or by amendment:

(2) To make and sell abstracts of title in any counties of Texas or other states;

(3) To accumulate and lend money, to purchase, sell or deal in notes, bonds, and securities, but without banking privileges;

(4) To act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court.

[Acts 1967, 60th Leg., p. 491, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.04. Governed by Other Laws

The laws governing corporations in general shall apply to and govern title insurance companies insofar as same are not inconsistent with the provisions of this Act.

[Acts 1967, 60th Leg., p. 492, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.05. Transfer and Assignment of Fiduciary Business to State Banks or Trust Companies

Sec. 1. Any corporation heretofore chartered under the provisions of Article 9.03 of this Act, or its antecedents, Article 9.01, Texas Insurance Code, or Chapter 40, Acts, 41st Legislature, 1929 (codified as Article 1302a, Vernon's Texas Civil Statutes), having as one of its powers "to act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter, as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court" may transfer and assign to a state bank or trust company created under the provisions of the Texas Banking Code of 1943, as amended, all of its fiduciary business in which such corporation is named or acting as guardian, trustee, executor, administrator or in any other fiduciary capacity, whereupon said state bank or trust company shall, without the necessity of any judicial action in the courts of the State of Texas or any action by the creator or beneficiary of such trust or estate, continue the guardianship, trusteeship, executorship, administration or other fiduciary relationship, and perform all of the duties and obligations of such corporation, and exercise all of the powers and authority relative thereto now being exercised by such corporation, and provided further that the transfer or assignment by such corporation of such fiduciary business being conducted by it under the powers granted in its original charter, as

amended, shall not constitute or be deemed a resignation or refusal to act upon the part of such corporation as to any such guardianship, trust, executorship, administration, or any other fiduciary capacity; and provided further that the naming or designation by a testator or the creator of a living trust of such corporation to act as trustee, guardian, executor, or in any other fiduciary capacity, shall be considered the naming or designation of the state bank or trust company and authorizing such state bank or trust company to act in said fiduciary capacity. All transfers and assignments of fiduciary business by such corporations to a state bank or trust company consistent with the provisions of this Act are hereby validated.

Sec. 2. The power and authority of such corporation to transfer and assign its fiduciary business to a state bank or trust company as provided in Section 1 hereof shall expire on April 30, 1962.

[Acts 1967, 60th Leg., p. 492, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.06. Capital Stock and Surplus Required

All title insurance companies created and operating under the provisions of this Act must have a paid up capital of not less than Two Hundred Fifty Thousand Dollars (\$250,000) and a surplus of not less than One Hundred Thousand Dollars (\$100,000), provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Act and which on that date had an unimpaired capital of less than Two Hundred Fifty Thousand Dollars (\$250,000) and a surplus of less than One Hundred Thousand Dollars (\$100,000) shall be as follows:

(a) One Hundred Thousand Dollars (\$100,000) capital until July 1, 1968 (no requirement as to minimum surplus during this period);

(b) From July 1, 1968, to July 1, 1969, One Hundred Thirty Thousand Dollars (\$130,000) capital and Twenty Thousand Dollars (\$20,000) surplus;

(c) From July 1, 1969, to July 1, 1970, One Hundred Sixty Thousand Dollars (\$160,000) capital and Forty Thousand Dollars (\$40,000) surplus;

(d) From July 1, 1970, to July 1, 1971, One Hundred Ninety Thousand Dollars (\$190,000) capital and Sixty Thousand Dollars (\$60,000) surplus;

(e) From July 1, 1971, to July 1, 1972, Two Hundred Twenty Thousand Dollars (\$220,000) capital and Eighty Thousand Dollars (\$80,000) surplus; and

(f) After July 1, 1972, every such corporation shall be required to have and maintain unimpaired capital of not less than Two Hundred Fifty Thousand Dollars (\$250,000) and surplus of not less than One Hundred Thousand Dollars (\$100,000) as otherwise required by this Article.

[Acts 1967, 60th Leg., p. 493, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.07. Policy Forms and Premiums**

Corporations organized under this Act, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law insofar as the business of either may be a title insurance business, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Act or any other law of the State of Texas shall be permitted to issue any title policy of any character, or underwriting contract, on Texas property other than under this Act and under such rules and regulations. No policy of title insurance or guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this Act. Before any rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the companies authorized or qualified under this Act. Under no circumstances may any company use any form until the same shall have been promulgated and approved by the Board.

The Board shall have the right and it shall be its duty to fix and promulgate the rates to be charged by corporations created or operating under this Act for premiums on policies or certificates, and underwriting contracts. The rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the company. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall have the right to require the companies operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for its consideration.

Rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all companies qualified or authorized to do business under this Act, and after public notice in such manner as to give fair publicity thereto for two (2) weeks in advance. The Board must call such hearing to consider rate changes at the request of a company writing title insurance, or if the Board thinks that a change in rates may be proper. Any company or other person interested, feeling injured by any action of the Board with regard to rates, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the

action of the Board. Under no circumstances shall any rate or premium be charged for policies or underwriting contracts different from those fixed and promulgated by the Board.

[Acts 1967, 60th Leg., p. 493, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.08. Prohibiting Guarantee of Payment of Obligations of Others—and "Insuring Around"**

Title insurance companies, domestic or foreign, operating under this chapter shall not have the right to guarantee the payment of mortgages which cover real estate, and if any such corporation shall do so it shall forthwith forfeit and surrender its permit to do business.

"Insuring around" is defined as the willful issuance of a title binder or title insurance policy showing no outstanding enforceable recorded liens while the issuer knows that in fact a lien or liens are of record against the real property, and shall be prohibited, except under circumstances as the State Board of Insurance under its rule-making powers shall approve.

Any person who willfully violates the provisions of this Article 9.08, or who disobeys an order of the Board refusing to approve an application to insure around, shall, upon proof thereof to the satisfaction of the District Court of Travis County, Texas, forfeit and pay to the State of Texas a sum not to exceed \$5,000, which may be recovered in a civil action.

The Board, upon giving thirty (30) days' notice by registered mail, and upon hearing had for that purpose, may forfeit the Certificate of Authority to do business of any company violating the provisions of this Article 9.08.

[Acts 1967, 60th Leg., p. 494, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.09. Prohibiting Transacting of Other Kinds of Insurance by Title Insurance Companies or The Transacting of Title Insurance by Other Types of Insurance Companies**

Corporations, domestic or foreign, operating under this Act, shall not transact, underwrite or issue any kind of insurance other than title insurance; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on the effective date of this Act was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Act except Article 9.18 relating to investments.

[Acts 1967, 60th Leg., p. 494, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.10. Foreign Corporations**

Corporations organized under the laws of any other state shall be permitted to do business in this

state on exactly the same basis and subject to the same rules, regulations and prices and supervision as fixed for Texas corporations doing business under this Act.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.11. Revocation of License

Any foreign or domestic corporations issuing any form of policy or underwriting contracts, or charging any premium rates on either owners', mortgagee's or other policies, or on underwriting contracts on Texas properties other than forms and rates prescribed by the Board, under the provisions of this Act shall forfeit its right to do business in Texas; but this shall not be construed as intended to require the charge made by one title insurance company, qualified to do business under this Act and doing a general title insurance business for the public in this state, for reinsuring or underwriting all or any part of the business of another such company, to be the same as the charge to the public.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.12. Deposits

All title insurance companies, domestic and foreign, engaged in the title insurance business must at all times have and keep on deposit with the State Treasury or such other depository in the State of Texas as may be named by such corporation and approved by the Board, either cash or such securities as are listed in Article 9.18 of this Act as approved investments for title insurance companies, to an amount equal to one-fourth of the authorized capital of such corporation; provided, however, that such deposit shall in no event exceed the sum of One Hundred Thousand Dollars (\$100,000). Such corporation, at its option may withdraw from time to time such securities or any part thereof, first having deposited in such depository in lieu thereof other securities of sufficient value to maintain the required deposit. Funds deposited under this provision shall never be used for the payment of any obligation other than those connected with title insurance, and in the event of the insolvency or dissolution of a corporation, the fund hereby provided shall be used to protect title insurance policyholders even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts; provided, however, that same shall be applied to the payment of other obligations and liabilities of said corporation and/or distribution to stockholders after complete payment of the obligations and liabilities of the corporation connected with title insurance business and the establishment of adequate reserves or reinsurance for the protection of any subsequently accruing or maturing title insurance obligations and liabilities, the amount of such reserves and the handling and distribution of same to be subject to the control and discretion of the Board, same to be reviewable in judicial proceedings to be governed by like rules as are applicable to review of rates under Article 9.07 of this Act. This deposit shall be for the benefit of all policyholders.

If a foreign title insurance company has on deposit with insurance regulatory bodies in the United States sums aggregating the amount of deposit required by this Article in such manner as to secure all policyholders wherever located, then no deposit shall be required in this state, but a certificate of deposit under the hand and seal of such insurance regulatory body or bodies with whom the deposits have been made shall be filed with the Board.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.13. Fees

The general laws applicable to payment of filing fees of corporations having a capital stock are hereby made applicable to corporations coming under the provisions of this Act.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.14. Charter and Amendments

The original charter of corporations doing a title insurance business and incorporated under the provisions of this Act, and the amendments to charters of corporations doing a title insurance business and incorporated under the provisions of this Act, or under Subdivision 57, Article 1302, Revised Civil Statutes of 1925, or under Article 1302a Texas Civil Statutes (Acts 1929, 41st Legislature, page 383, Chapter 245, Section 1) or under any other law regardless of the nature of such amendment, shall be certified only to and filed only with the Board, and only the Board shall collect from the said companies filing fees required under the law. All other laws or parts of laws, to the extent that the same are in conflict with the provisions of this Article, shall not hereafter apply to such corporations.

[Acts 1967, 60th Leg., p. 496, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.15. Certificate of Authority

The Board after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and surplus as required by Article 9.06 and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the company), shall issue to such company a certificate of authority to transact the characters of business provided for in this Act on either an annual or a continuing basis. No title insurance company, domestic or foreign, shall transact business under this Act unless it shall hold a valid certificate of authority.

[Acts 1967, 60th Leg., p. 496, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.16. Reserves

(1) Every domestic title insurance company doing a title insurance business under the provisions of this Chapter shall establish and maintain an unearned premium reserve during the period and for the uses and purposes hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the original premium, and shall be charged as a reserve liability of such company in determining its financial condition.

(2) Such reserve shall be cumulative and shall be established and shall consist of the following:

(a) The reserve which has been established as has been required to be established by such companies up to the effective date of this Act, pursuant to Article 9.11 of the Insurance Code, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 491 as amended by the Acts of the 54th Legislature, Regular Session, 1955, Chapter 489, and the Acts of the 56th Legislature, 1959, Chapter 219; and

(b) Beginning on January 1, 1959, each insurer which has accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) required by Article 9.11, Chapter 9 of the Insurance Code, as amended by Acts of the 54th Legislature, Regular Session, 1955, and Acts of the 56th Legislature, 1959, shall reserve a sum equal to three (3%) percent of the premiums charged for title insurance contracts; and

(c) Beginning on January 1, 1959, each insurer which has not accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) required by Article 9.11, Chapter 9 of the Insurance Code, as amended by Acts of the 54th Legislature, Regular Session, 1955, and Acts of the 56th Legislature, 1959, shall reserve a sum equal to five (5%) percent of the premiums charged for title insurance contracts until the unearned premium reserve shall have reached a total of One Hundred Thousand Dollars (\$100,000) and thereafter such insurer shall reserve a sum equal to three (3%) percent of the premium charged for title insurance contracts; and

(d) Beginning on January 1, 1959, each domestic insurer shall reserve a sum equal to ten (10%) percent of the risk rate charged for title insurance contracts on property outside the State of Texas. This requirement shall be cumulative of, and not in addition to, the reserve requirement that might be imposed upon such insurer in such other state or states.

(3) The term "premium" as used herein means the total amount of premium as fixed and promulgated by the State Board of Insurance in accordance with Article 9.07 of this Code for title insurance contracts covering property in this state.

(4) The reserves as provided in Subdivision (2) of this Article shall be reduced in the following manner, which reduction may be used for any corporate purpose:

(a) As to insurers which have accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) under the provisions of (2)(a) above, as of the effective date of this Act, such unearned premium shall be reduced at the rate of one-twentieth ( $\frac{1}{20}$ ) thereof per year beginning at the end of calendar year 1959 and a like amount at the end

of each calendar year thereafter for nineteen (19) consecutive years.

(b) As to insurers which have accumulated reserves as provided in (2)(b) and (2)(d) above, such unearned premium shall be reduced at the end of each calendar year in which the title insurance contract was issued at the rate of one-twentieth ( $\frac{1}{20}$ ) of such sum for the first year and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.

(c) As to insurers which have accumulated reserves as provided in (2)(c) above, such unearned premium shall be reduced at the rate of one-twentieth ( $\frac{1}{20}$ ) of such sum per year beginning at the end of the calendar year in which such One Hundred Thousand Dollars (\$100,000) shall have been accumulated and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.

(5) Any foreign title insurance company doing business in this state shall be required to comply with the provisions of this Article unless by the laws of its state of domicile, it is required to set aside and maintain unearned premium reserve in substantially the same amount as required by this Article.

(6) Such reserve fund shall be held in cash or invested in first mortgage notes or such securities as are admissible for investment by life insurance companies under the laws of this state.

(7) In the event of the insolvency or dissolution of any such insurer, such reserve fund shall be used to protect title insurance contract holders, even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts. [Acts 1967, 60th Leg., p. 496, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.17. Reserve for Unpaid Losses and Loss Expenses

(a) All title insurance companies operating under the provisions of this Act shall at all times establish and maintain, in addition to other reserves, a reserve against (1) unpaid losses, and (2) loss expense, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred, by reason of every claim presented, pursuant to notice from or on behalf of the insured, of a title defect in or lien or adverse claim against the title insured, that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of items so estimated shall be the total expenses of such title insurance company.

(b) The amounts so estimated may be revised from time to time as circumstances warrant, but shall be redetermined at least once each year.

(c) The amounts set aside in such reserve in any year shall be deducted in determining the net profits for such year of any title insurance company. [Acts 1967, 60th Leg., p. 497, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.18. Admissible Investments for Title Insurance Companies**

Investments of all title insurance companies operating under the provisions of this Act shall be held in cash or may be invested in the following:

(a) Any corporation organized under this Act having the right to do a title insurance business may invest as much as fifty (50%) percent of its capital stock in an abstract plant or plants, provided that the valuation to be placed upon such plant or plants shall be approved by the Board; provided, however, that if such corporation maintains with the Board the deposit of One Hundred Thousand Dollars (\$100,000) in securities as provided in Article 9.12 of this Act, such of its capital in excess of fifty (50%) percent, as deemed necessary to its business by its board of directors may be invested in abstract plants; and provided further, that no such corporation created or operating under the provisions of this Act may either directly or through ownership of a portion of the capital stock of another corporation, or otherwise, hereafter own or acquire more than one abstract plant in any one county.

(b) Those securities set forth in Article 3.39, Insurance Code, as authorized investments for life insurance companies and in authorized investments for title insurance companies under the laws of any other state in which the affected company may be authorized to do business from time to time.

(c) Real estate or any interest therein which may be:

(1) required for its convenient accommodation in the transaction of its business with reasonable regard to future needs;

(2) acquired in connection with a claim under a policy of title insurance;

(3) acquired in satisfaction or on account of loans, mortgages, liens, judgments or decrees, previously owing to it in the course of its business;

(4) acquired in part payment of the consideration of the sale of real property owned by it if the transaction shall result in a net reduction in the company's investment in real estate;

(5) reasonably necessary for the purpose of maintaining or enhancing the sale value of real property previously acquired or held by it under Subparagraphs (1), (2), (3) or (4) of this Section; provided, however, that no title insurance company shall hold any real estate acquired under Subparagraphs (2), (3) or (4) for more than ten (10) years without written approval of the Board.

(d) First mortgage notes secured by:

(1) abstract plants and connected personalty;

(2) stock of title insurance agents;

(3) construction contract or contracts for the purpose of building an abstract plant and connected personalty;

(4) any combination of two or more of items (1), (2), and (3).

In no event shall the amount of any first mortgage note exceed eighty (80%) percent of the appraised value of the security for such note as set out above.

Any investments which do not now qualify under the provisions of Subsections (a), (b), (c), or (d) above and which are owned as of the effective date of this Act shall continue to qualify.

If any otherwise valid investment which qualifies under the provisions of this Article shall exceed in amount any of the limitations on investment contained in this Article, it shall be inadmissible only to the extent that it exceeds such limitation.

[Acts 1967, 60th Leg., p. 498, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.19. Maximum Liability**

No company operating under the provisions of this Act shall issue any policy of title insurance on any real property in Texas involving a contingent liability on said policy of more than fifty (50%) percent of the capital stock and surplus of the company unless the excess shall be simultaneously reinsured in some other company licensed to do business in Texas. Such company may reinsure any or all of its policies and contracts issued on real property in Texas provided the reinsuring company shall be licensed to do business in Texas and the form of reinsurance contract shall be first approved by the Board.

After the Board has approved one or more forms of reinsurance contract for a company, such company may thereafter continue using such form or forms without submitting individual reinsurance contracts to the Board; provided, however, that the Board shall retain the right to change the form of reinsurance contract for future use after giving written notice to the title insurance companies to be affected.

When it appears advisable, in the discretion of the Board, that reinsurance should be permitted with a company not licensed to do business in the State of Texas but otherwise qualified, application may be made to the Board, and the Board shall be authorized to grant or deny permission to reinsure with such unlicensed company on an individual policy or facultative basis. An unlicensed company reinsuring in accordance with this provision shall not thereby be deemed to be doing business in Texas.

[Acts 1967, 60th Leg., p. 498, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.20. Capital Stock and Minimum Surplus Impairment**

The capital stock and minimum surplus requirement of every title insurance company, domestic or foreign, operating under the provisions of the Act must be maintained intact over and above all its

outstanding liabilities, except contingent liabilities on policies of title insurance, and if such company shall suffer the impairment of its capital stock, or minimum surplus requirements it shall report such impairment forthwith to the Board.

[Acts 1967, 60th Leg., p. 499, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.21. Authority of Board of Insurance of The State of Texas**

If any company operating under the provisions of this Act shall engage in the characters of business described in Subdivisions (2) and (3) of Article 9.03 of this Act, in such manner as might bring it within the provision of any other regulatory statute now or hereafter to be in force within the State of Texas, all examination and regulation shall be exercised by the Board rather than any other state agency which may be named in such other laws, so long as such corporation engages in the title guaranty or insurance business.

The Board is hereby vested with power and authority under this Act to promulgate and enforce rules and regulations prescribing underwriting standards and practices upon which title insurance contracts are to be issued, and is hereby further vested with the power and authority to define risks which may not be assumed under title insurance contracts. In addition, the Board is hereby vested with power and authority to promulgate and enforce all other such rules and regulations which in the discretion of the Board are deemed necessary to accomplish the purposes of this Act.

[Acts 1967, 60th Leg., p. 499, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.22. Annual Statement of Title Insurance Companies; Examination**

Every title insurance company, domestic and foreign, operating under the provisions of this Act shall, on or before the first of March every year, file with the Board a verified statement, in such form as the Board may require, setting forth the statement of the business done by it during the preceding year, and the condition of its affairs as of December 31st preceding. It shall be the duty of the Board, biennially, or oftener if it shall be deemed advisable, in person or through a duly appointed representative, to make a thorough examination of the company's books and affairs and the transactions in which it is engaged at the expense of said company, for which purpose the Board or its representatives shall have access to the books and records of the said company, and shall have the right to interrogate and require answer under oath from any officer, agent or employee of the said company concerning any matters pertaining to the business thereof.

[Acts 1967, 60th Leg., p. 499, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.23. Regulating of Names**

Corporations chartered or operating under the provisions of this Act may use in their corporate name the words "Title and Trust Company" but they shall not use the word "Trust" alone, and where the word "Trust" appears, when in letterheads and liter-

ature used by them, they shall print the words "Without Banking Privileges."

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.24. Foreign Corporations; Permits**

Any foreign corporations desiring to transact the character of business provided for in this Act in this state shall make an application for permit or certificate of authority to the Board in such form as the Board shall prescribe and shall submit a financial statement showing its condition in such form as the Board shall prescribe.

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.25. Capital and Surplus Required; Foreign Corporations**

No foreign corporation shall be permitted to do business in this state unless it shall show from its financial statement and such other examination as the Board may desire to make, an unimpaired capital of not less than Two Hundred Fifty Thousand Dollars (\$250,000) and surplus of not less than One Hundred Thousand Dollars (\$100,000), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a permit or certificate of authority on the effective date of this Act, which corporation on such date had an unimpaired capital of less than Two Hundred Fifty Thousand Dollars (\$250,000) and surplus of less than One Hundred Thousand Dollars (\$100,000) shall be as follows:

(a) One Hundred Thousand Dollars (\$100,000) capital until July 1, 1968 (no requirement as to minimum surplus during this period);

(b) From July 1, 1968, to July 1, 1969, One Hundred Thirty Thousand Dollars (\$130,000) capital and Twenty Thousand Dollars (\$20,000) surplus;

(c) From July 1, 1969, to July 1, 1970, One Hundred Sixty Thousand Dollars (\$160,000) capital and Forty Thousand Dollars (\$40,000) surplus;

(d) From July 1, 1970, to July 1, 1971, One Hundred Ninety Thousand Dollars (\$190,000) capital and Sixty Thousand Dollars (\$60,000) surplus;

(e) From July 1, 1971, to July 1, 1972, Two Hundred Twenty Thousand Dollars (\$220,000) capital and Eighty Thousand Dollars (\$80,000) surplus; and

(f) After July 1, 1972, every foreign corporation permitted to do business in this state shall be required to have and maintain unimpaired capital of not less than Two Hundred Fifty Thousand Dollars (\$250,000) and surplus of not less than One Hundred Thousand Dollars (\$100,000) as otherwise required by this Article.

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.26. Power of Attorney**

Each such foreign corporation engaged in doing or desiring to do business in this state shall file with

the Board an irrevocable power of attorney, duly executed, constituting and appointing the Chairman of the Board and his successors in office, or any officer or Board which may hereafter be clothed with the powers and duties now devolving upon said Chairman of the Board, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this state, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service, and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this state or to collect premiums of insurance from citizens of this state, and so long as it shall have outstanding policies in this state, and until all claims of every character held by the citizens of this state, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or by a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same acknowledge its execution before an officer authorized by the laws of this state to take acknowledgements. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution duly certified to by the proper officer of said company, shall be filed with the said power of attorney in the office of the Chairman of the Board and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of the Board. [Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.27. Service of Process

Whenever the Chairman of the Board shall accept service or be served with citation in any suit pending against any title insurance company in this state, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this state, and, if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten (10) days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail in Austin, Texas. [Acts 1967, 60th Leg., p. 501, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.28. Authority Revoked; when

If any corporation, domestic or foreign, while holding a certificate of authority to transact business in this state, shall fail or refuse to comply with any of the provisions or requirements of this Chapter, the Board, upon ascertaining this fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this state at the expiration of thirty (30) days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty (30) days, it shall be the duty of the Board to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this Chapter. Any company feeling itself aggrieved by the action of the Board in revoking its certificate of authority to do business in this state may bring suit against it in Travis County, Texas, to annul and vacate the order revoking such certificate.

[Acts 1967, 60th Leg., p. 501, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.29. Supervision, Conservation and Liquidation of Title Insurance Companies

##### PART I

Sec. A. If, upon examination or at any other time, it shall appear to the Board that any of the following conditions exist relative to any company organized under the laws of this state and doing a title insurance business in this state:

- (1) the minimum surplus requirements of said company are impaired to the extent of fifty (50%) percent and have remained in such state of impairment continuously for at least sixty (60) days; or
- (2) the capital stock of said company is impaired; or
- (3) the company is issuing policies of title insurance contrary to law or regulations promulgated by the Board; or
- (4) the company has refused to permit the examination of its books and records by the Board or by its duly commissioned examiners, and has failed and refused to answer inquiries made by the commissioner; or
- (5) in the opinion of the Board, the condition of the company is such as to render the continuance of its business hazardous to the public or to its policyholders; or
- (6) the business of a company is being conducted fraudulently;

then the Board shall notify the company of its determination that such condition or conditions ex-

ist, and such company shall have thirty (30) days under the supervision of the Board in which to correct such condition in accordance with the requirements of the Board.

During the period of supervision, the Board may appoint a supervisor to supervise such company and may provide that the company shall not do any or all of the following things during the period of supervision without the prior approval of the Board or its supervisor:

- (1) Dispose of, convey or encumber any of its assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation or liability; or
- (7) Merge or consolidate with another company.

Sec. B. 1. The Board after hearing and notice to any company organized under the laws of this state and doing a title insurance business in this state, may appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company if it finds, based upon substantial evidence, any of the following:

(a) The company has failed within the thirty-day time set out in any notice provided under this Article to correct any aforesaid condition set out in the notice in accordance with the requirements of the Board.

(b) The company has had its certificate of authority to do business in the State of Texas revoked or suspended or has voluntarily surrendered such certificate of authority.

2. The Board may without notice and hearing appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any company organized under the laws of this state and doing a title insurance business in this state when requested to do so by the board of directors of said company. The board of directors of any such company shall also have the right to waive any notice provision provided in this Article by filing with the Board a written instrument in the form of a resolution passed by them or by an instrument signed by a majority of them specifically stating such waiver of notice.

Sec. C. After appointment, the conservator shall immediately take charge of such company and all of the property, books, records and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Board may direct. During the pendency of conservatorship, the conservator shall make such reports to the Board from time to time as may be required by the Board, and shall be empowered to take all necessary

measures to preserve, protect and recover any assets or property of such title insurance company, and to deal with the same in his own name as conservator including claims or causes of action belonging to or which may be asserted by such title insurance company, and shall be empowered to file, prosecute and defend any suit or suits which have been filed or which may thereafter be filed by or against such title insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If, at the time of appointment of a conservator or at any time during the pendency of such conservatorship, it appears that the interest of the policyholders or certificate holders of such title insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction of the Board, reinsure all or any part of such company's policies or certificates of insurance with some solvent title insurance company or association authorized to transact title insurance business in this state, and to the extent that such title insurance company in conservatorship is possessed of funds and assets, including reserves and deposits, the conservator may transfer to the reinsuring title company such funds and assets or any portion thereof as may be required to consummate the reinsurance of such policies, and any such funds and assets so transferred shall not be deemed a preference of creditors.

If, upon the appointment of a conservator or at any time during the pendency of conservatorship, the Board finds that such title insurance company is not in condition to satisfactorily continue business in the interest of its policyholders or certificate holders under a conservatorship as above provided, the Board may proceed to liquidate such title insurance company through such conservator or request the Attorney General of Texas to institute proceedings to liquidate and dissolve the title insurance company.

Sec. D. The cost incident to the supervisor's or conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

## PART II

Sec. A. If, upon examination or at any other time, it shall appear to the Board that any of the conditions enumerated in Section A of Part I of this Article exist relative to any company not organized under the laws of this state and conducting a title insurance business in this state, then the Board shall notify the company of its determination that such condition or conditions exist, and such company shall have thirty (30) days under the supervision of the Board in which to correct such condition in accordance with the requirements of the Board.

During the period of supervision, the Board may appoint a supervisor to supervise the assets in the State of Texas, and the policy liabilities owed to residents of the State of Texas and may provide,

with reference to any of such assets and liabilities that such company shall not do any or all of the following things during the period of supervision without the prior approval of the Board or its supervisor:

- (1) Dispose of, convey or encumber any of its assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation or liability; or
- (7) Merge or consolidate with another company.

Sec. B. 1. The Board, after hearing and notice to any company not organized under the laws of this state or any person or noncorporate firm doing a title insurance business in this state, may appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company if it finds, based upon substantial evidence, any of the following:

(a) The company has failed within the thirty-day time set out in any notice provided under this Article to correct any aforesaid condition set out in the notice in accordance with the requirements of the Board.

(b) The company has had its certificate of authority to do business in the State of Texas or the state of its domicile revoked or suspended or has voluntarily surrendered either of such certificates.

(c) The company, person or noncorporate firm does not have a certificate of authority to do business in this state.

2. The Board may without notice and hearing appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company, person or noncorporate firm doing a title insurance business in this state when requested to do so by the Board of Directors or the governing body of such noncorporate firm or by the person conducting the business or at the request of any receiver or conservator of such company, noncorporate firm or person.

Sec. C. The conservator as to records and assets in the State of Texas of such company, noncorporate firm and person and policyholder liabilities owed to residents of this state shall have the same rights, obligations and duties as provided to a conservator appointed under the provisions of Part I of this Article.

Sec. D. The cost incident to the supervisor's or conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds in the State of Texas of the company to be allowed and paid as the Board may determine.

### PART III

Sec. A. In all actions and proceedings brought by or against the supervisor or conservator because of or as the result of his being appointed under the provisions of this Article or against assets in his possession or under his control as the result of his being appointed conservator under the provisions of this Article or brought by or against a company while subject to an order of conservatorship, venue shall be in Travis County, Texas.

Sec. B. The provisions of this Article shall be cumulative of all other laws, general and special, relating to the subject matter hereof.

Sec. C. The provisions of Article 21.28 of the Texas Insurance Code shall apply to all companies subject to Chapter Nine of the Texas Insurance Code and the same shall not be deemed to be restricted in any way by the provisions of this Article. [Acts 1967, 60th Leg., p. 501, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.30. Rebates and Discounts

No commissions, rebates, discounts, or other device shall be paid, allowed or permitted by any company, domestic or foreign, or by any agent doing the business provided for in this Act, relating to title policies or underwriting contracts and no portion of any premium shall be paid to anyone for soliciting or referring title insurance business; provided this shall not prevent any title insurance company, domestic or foreign, from appointing as its representative in any county any person, firm, or corporation owning and operating an abstract plant of such county and making such arrangements for division of premiums as may be approved by the Board. [Acts 1967, 60th Leg., p. 504, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.31. Fees and Occupation Tax on Foreign Corporations

Any corporation organized and incorporated under the laws of any other state, territory or country for the purpose of transacting a title insurance or title guaranty business shall be required to pay the same filing fees and occupation tax as any foreign casualty company is required to pay in order to procure a permit to do business in Texas. Such foreign title companies will not be required to pay a franchise tax.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.32. Prohibiting Further Chartering of Corporations Under Article 1302

No corporation shall be chartered under Subdivision 57, Article 1302, Revised Statutes of Texas, 1925, but all corporations heretofore incorporated and now doing business in Texas shall be permitted to continue in business and shall be subject to all the provisions of this Act, and such companies shall be required to comply with the requirements of this Act with reference to investments and deposits.

Stockholders in a company acting under this Act shall not be liable in the event of default in the payment of any debt or liability of such company beyond their subscription for such stock.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.33. To Cancel License; Appeals by Companies**

The terms and provisions of this Act are conditions upon which corporations doing the business provided for in this Act may continue to exist, and failure to comply with any of them or a violation of any of the terms of this Act shall be proper cause for revocation of the permit and forfeiture of charter of a domestic corporation or the permit of a foreign corporation.

Any company qualified or seeking to qualify under this Act, feeling aggrieved by any action of the Board, especially, but not limited to, any action against such company, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made its order or ruling; provided, however, that if the order or ruling is directed against such company, whether or not directed against other companies, such company shall have thirty (30) days after receipt of official notice of such ruling from the Board to review such action of the Board. Such cases shall be tried de novo in such District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of pleading, including rights of amendments thereof, evidence, and procedure as are applicable to other civil cases in the original jurisdiction of a District Court.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.34. Determination of Insurability**

No policy or contract of title insurance shall be written unless and until the title insurance company (a) has caused a search of title to be made from the title evidence prepared from an abstract plant as herein defined, or if no such abstract plant of the county exists, or the owner of such plant refuses to furnish the title insurance company desiring to insure, such title evidence at its regular charge and within a reasonable period of time, then such policy or contract of title insurance shall be based upon the best title evidence available, and (b) has caused to be made a determination of insurability of title in accordance with sound title underwriting practices. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than fifteen (15) years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company or the agent of the title insurance company, may in the regular course of business establish a system whereby all or part of these writings are recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This Article shall not ap-

ply to (a) a company assuming no primary liability in a contract of reinsurance, or (b) a company acting as a co-insurer if one of the other co-insuring companies has complied with this Article.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.35. Requirements for Agents**

No person, firm, association or corporation shall act within this state as agent for any title insurance company, domestic or foreign, without first having been (1) licensed as an agent by the Board and (2) filing a bond or cash deposit in lieu thereof as required in Article 9.38; and no title insurance company shall allow or permit any person, firm, association or corporation to act as its agent within the state unless said person, firm, association or corporation shall first have obtained a license, and filed a bond as required by this Act.

[Acts 1967, 60th Leg., p. 506, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.36. Agent's Licenses: Application, Issuance, Renewal and Cancellation**

A. Before an initial license is issued to any person, firm, association or corporation to act as agent within the State of Texas for any title insurance company, there shall first be filed by the title insurance company with the Board an application for agent's license, on forms to be provided by the Board, accompanied by a fee of Two Dollars (\$2). The application shall be signed and duly sworn to by the title insurance company and the proposed agent. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act.

The Board shall grant such license if it determines from the application and its own investigation that the foregoing requirements have been met.

B. On or before the first day of June of each year, every title insurance company, domestic or foreign, operating under the provisions of this Act, shall certify to the Board, on forms provided by the Board, the names and addresses of every title insurance agent of said company within the state, and shall apply for and pay a fee of \$2.00 for an annual license in the name of each such agent included in said list; if any such company shall terminate any

licensed agent, it shall immediately notify the Board in writing of such act and request cancellation of such license, notifying the agent of such action. No such title insurance company shall permit any agent appointed by it to write, sign, or deliver title insurance within the state until the foregoing conditions have been complied with, and the Board has granted said license. The Board shall deliver such license to the title insurance company for transmittal to the Agent.

Licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any title insurance company surrenders or has its certificate of authority revoked by the Board, all existing licenses of its title insurance agents shall automatically terminate without notice.

Any title insurance agent may be licensed to represent one or more such title insurance companies, with a separate license granted for each.

The Board shall keep a record of the names and addresses of all licensed agents in such manner that the agents appointed by any company authorized to transact title insurance business within the State of Texas may be conveniently ascertained and inspected by any person upon request.

C. If a title insurance company terminates its contract with a title insurance agent or gives notice of termination to the title insurance agent, then any such agent may, within thirty (30) days after either occurrence apply to the Board for continuation of his license with an amendment thereto showing the name of another title insurance company for whom he is or will be authorized to act.

[Acts 1967, 60th Leg., p. 506, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.37. Agent's Licenses: Surrender, Forfeiture; Grounds for Revocation; Notice, Hearing and Appeal**

A. Any title insurance agent may voluntarily surrender his license at any time by giving notice to the Board and to the title insurance company concerned. Any agent shall automatically forfeit the license under the title insurance company represented if he shall terminate his agency contract with such company.

B. The license of any agent may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

- (1) Has wilfully violated any provision of this Act; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, an insured or any other person; or

(5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or

(6) Has been guilty of fraudulent or dishonest practices; or

(7) Has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) Is not of good character or reputation; or

(9) Has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts.

C. Before the license of any title insurance agent shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of such license and to the title insurance company or companies who desire that such license be granted or continued in effect, and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the title company or companies concerned.

D. No applicant or licensee whose license has been denied, refused or revoked hereunder shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

E. If the Board shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant or licensee, and any title insurance company or companies concerned, may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. Said action shall have precedence over all

other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1967, 60th Leg., p. 507, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.38. Bonds for Agents

(a) Every person, firm, association, or corporation which has been licensed as a title insurance agent shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of Seven Thousand Five Hundred Dollars (\$7,500) which bond shall obligate the principal and surety to pay such pecuniary losses as may result to any participant in an insured real estate transaction which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title insurance agent. In lieu of such bond any title insurance agent may deposit with the Board cash (or securities approved by the Board) which cash and securities shall be in the amount of Seven Thousand Five Hundred Dollars (\$7,500) and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that the terms of any agent's bond may have been violated, the Board may require the agent to appear in Travis County with such records as the Board deems proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, and there conduct an examination into the matter. If upon such examination the Board is satisfied that the terms of said bond have been violated, the Board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

[Acts 1967, 60th Leg., p. 508, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.39. Annual Audit and Report of Agents

Every title insurance agent shall have an annual audit, at its or his expense, made of trust fund accounts, and within ninety (90) days from the termination of its fiscal year, shall send by certified mail, postage prepaid, to the Board one copy of such

audit report with a letter of transmittal, and each such agent, shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents.

The Board shall promulgate regulations setting forth the standards of audit and the form of audit report required.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either, recommended by said agent and approved by each title insurance company represented by said agent.

Each title insurance company shall examine and analyze the audit report furnished by each of its agents, and shall within three (3) months of receipt of same report to the Board on forms to be furnished by the Board the findings and results of its examination and analysis of such audit report. If a title insurance company fails to receive an audit report from any of its agents within the time specified above, it shall forthwith report such omission to the Board.

All such reports and analyses furnished by the title insurance company to the Board shall, at the election of the Commissioner, be classed as confidential and privileged after having been filed with the Board.

If any agent shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the Board may, after notice to the agent and each title insurance company involved and after a hearing at which the agent and title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such agent.

Any agent or title insurance company feeling aggrieved by any action of the Board hereunder shall have the right to file a suit in the District Court of Travis County in the time and manner provided in Article 9.37.

[Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.40. Right of Title Insurance Company to Examine Agent's Trust Fund Accounts and to Require Reports

Any title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title insurance agents, such examination to be made at the expense of the title insurance company; or the title insurance company may require special reports from any such agent regarding any of its transactions.

[Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.41. Requirements for Escrow Officers

No person shall act in the capacity of escrow officer without (1) being licensed by the Board, and

(2) obtaining and maintaining a surety bond as required by Article 9.45; and no title insurance agent shall employ any person as escrow officer who is not licensed and bonded in accordance with the provisions of this Act.  
 [Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.42. List of Escrow Officers Must be Filed**

Every title insurance agent licensed and operating under the provisions of this Act shall on or before the first day of June of each year, certify to the Board on forms provided by the Board the names and addresses of every person employed by it to serve in the capacity of escrow officer within the state, and shall apply for and pay an annual license fee of Two Dollars (\$2) for each such person included in said list. If it shall terminate any licensed escrow officer, it shall immediately notify the Board in writing of such act and request cancellation of the license, notifying such escrow officer of such action. No agent shall permit any person to act as escrow officer within the state until the foregoing conditions have been complied with, and the Board has granted the said license.

Licenses shall continue until the first day of the next June, unless previously cancelled. Provided, however, that if any title insurance agent surrenders all its licenses, or has all its licenses revoked by the Board, all existing licenses of its escrow officers shall automatically terminate without notice.

The Board shall keep a record of the names and addresses of all escrow officers licensed by it in such manner that the escrow officers employed by any title insurance agent within the state may be conveniently determined.  
 [Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.43. Application for Escrow Officer's License**

A. Before an initial license is issued to any person to act as escrow officer within the State of Texas for any title insurance agent, there shall be first filed by such title insurance agent with the Board an application for an escrow officer's license on forms provided by the Board, accompanied by a fee of Two Dollars (\$2). The application shall be signed and duly sworn to by such title insurance agent and by the proposed escrow officer.

B. Such application shall contain the following:

- (1) that the proposed escrow officer is a natural person and a bona fide resident of the State of Texas;
- (2) that the proposed escrow officer has reasonable experience or instruction in the field of title insurance;
- (3) that the proposed escrow officer is known to the agent to have a good business reputation and is worthy of the public trust and the agent knows of no fact or condition which would disqualify him from receiving a license;
- (4) that the proposed escrow officer qualifies as an escrow officer as defined in this Act.

The Board shall grant such license, if it determines from the application and its own investigation that the foregoing requirements have been met.  
 [Acts 1967, 60th Leg., p. 510, ch. 219, § 1, eff. Oct. 1, 1967.]

**Art. 9.44. Annual License of Escrow Officers; Surrender and Cancellation**

A. Any escrow officer may voluntarily surrender his license at any time by giving notice to the Board. An escrow officer shall likewise automatically forfeit his license if he shall fail to be employed as an escrow officer.

B. The license of any escrow officer may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

- (1) has wilfully violated any provision of this Act; or
- (2) has intentionally made a material misstatement in the application for such license; or
- (3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, agent, or any other person; or
- (5) has otherwise demonstrated lack of trustworthiness or competence to act as escrow officer; or
- (6) has been guilty of fraudulent or dishonest practices; or
- (7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or
- (8) is not of good character or reputation.

C. Before the license of any escrow officer shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of such license and to the title insurance agent which is either the employer of the holder of such license or desires that such license be granted, continued or renewed and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the title insurance agent may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the agent concerned.

D. No applicant or licensee whose license has been denied, refused or revoked hereunder shall be entitled to file another application for a license as an escrow officer within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

E. If the Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder. [Acts 1967, 60th Leg., p. 510, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.45. Bonds for Escrow Officers

(a) Every title insurance agent shall procure at its expense for its escrow officers, a bond of such type as may be approved by the State Board of Insurance with a surety licensed by the Board to do business in Texas, in an amount to be determined by multiplying the number of escrow officers by Five Thousand Dollars (\$5,000) but not exceeding Fifty Thousand Dollars (\$50,000) payable to the State Board of Insurance, which bond shall obligate the principal and surety to pay such pecuniary loss as the agent shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such escrow officer, either directly and alone, or in connivance with others. In lieu of such bond, cash (or securities approved by the Board) in multiples of Five Thousand Dollars (\$5,000) per escrow officer employed but not exceeding Fifty Thousand Dollars (\$50,000) may be deposited by the agent with the Board, subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that the terms of any such bond as provided in Paragraph (a) of this Article 9.45 may have been violated, the Board may require the escrow officer to appear in Travis County with such records as the Board deems

proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, copies of which notice shall also be sent to any title insurance agent concerned, and there conduct an examination into the matter. If upon such examination the Board is satisfied that the terms of said bond have been violated by an escrow officer, the Board shall immediately notify the surety and agent concerned and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

[Acts 1967, 60th Leg., p. 511, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.46. Maintenance Tax on Gross Premiums; Disposition of Unexpended Balance

To defray the expense of carrying out the provisions of this Act the State of Texas shall assess and collect not exceeding an additional one (1%) percent of the gross premiums collected by every insurer on all title insurance premiums according to the reports made to the Board as required by law. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Title Insurance Fund, which fund shall be kept separate and apart from all other funds and moneys in his hands, to be used for the sole purpose of administering the provisions of this chapter; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this Article. Should there be an unexpended balance at the end of any year in said fund, the Board shall reduce the assessment for the succeeding year so that the amount produced and paid into the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the division of the Board administering the provisions of this Act.

[Acts 1967, 60th Leg., p. 512, ch. 219, § 1, eff. Oct. 1, 1967.]

#### Art. 9.47. Exceptions

Sec. 1. Unless title insurance companies or the business of title insurance is expressly mentioned, no provision of this Code, except as contained in this Chapter, shall be applicable to corporations incorporated or doing business exclusively under this Chapter, or to the title insurance business conducted by corporations created under Subdivision 57, Article 1302 of the Revised Statutes of 1925, or under Chapter 8 of this Code, or under any other law, and no law hereafter enacted shall apply to such title insurance companies or to such title insurance business unless such subsequent enactment expressly states that it shall so apply.

Sec. 2. Regardless of Section 1 of this Article, where applicable to title insurance companies, Article 1.01 through 1.25; Article 2.01; Article 2.02, Sections 1, 2 and 3; Article 2.03, except Section 5; Article 2.04; Article 2.05; Article 2.06; Article 3.01, Section 10(a), (b) and (c); Article 3.12, except Section (c); Article 3.13; Article 3.14; Article 21.21; Article 21.21-1; Article 21.25; Article 21.26; Article 21.31; Article 21.36; Article 21.37; Article 21.43; Article 21.46; and Article 21.47 shall apply to and govern title insurance companies where applicable thereto. In case of conflict between provisions of any of the foregoing articles and the provisions of this Chapter Nine, the latter shall govern.

[Acts 1967, 60th Leg., p. 512, ch. 219, § 1, eff. Oct. 1, 1967.]

## CHAPTER TEN. FRATERNAL BENEFIT SOCIETIES

### Article

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### Art. 10.01. Fraternal Benefit Society

Any corporation, society, order of <sup>1</sup> voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative

form of government, and which shall make provision for the payment of benefits in accordance with Article 10.05 is hereby declared to be a fraternal benefit society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

<sup>1</sup> So in enrolled bill. Probably should read "or."

### Art. 10.02. Lodge System Defined

Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be admitted in accordance with its constitution, laws, ritual, rules and regulations, and which shall be required by the laws of such society to hold periodical meetings, shall be deemed to be operating on the lodge system.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### Art. 10.03. Representative Form of Government Defined

Any society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and not less than the number of votes required to amend its constitution and laws; and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four calendar years. No member under age sixteen shall have voice or vote in the management of the society. No member, officer, representative or delegate shall vote by proxy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### Art. 10.04. Exemptions

Except as herein provided, such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### Art. 10.05. Benefits

(1) A society authorized to do business in this State may provide for the payment of:

- (a) Death benefits in any form;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits as a result of disease or accident;
- (e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;
- (f) Monument or tombstone benefits to the memory of deceased members not exceeding in

any case the sum of Three Hundred Dollars (\$300);

(g) For the payment of funeral benefits, and

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 352, ch. 169, § 1.]

#### Art. 10.06. Benefits Upon Life of Child

Any fraternal benefit society authorized to do business in this State may provide in its laws, in addition to other benefits provided for therein, for insurance, annuities, or for insurance and annuities, upon the lives of children at any age, upon the application of some adult person related to or interested in said child as the laws of such society may provide. Any such society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.07. Contributions on Certificates; How Based

The contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table Three and One-half Per Cent," or the "English Life Table Number Six," or such other mortality table as may be approved by the Chairman of Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.08. Reserve

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the Standard Mortality and Interest Tables adopted by the society for computing contributions, same to be first approved by the Board of Insurance Commissioners.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 24.]

#### Art. 10.09. Enforcing Payment of Contributions and Control of Certificates

Any society shall have the full power to provide for means of enforcing payment of contributions, designations, and in all other respects for the regulation, government and control of such certificate and all rights, obligations and liabilities incident thereto and connected herewith not at variance with the provisions of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.10. Specified Payments

Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled

with the general fund of the society as its constitution and by-laws may provide.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.11. Child Membership

In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.12. Members and Beneficiaries

Any person may be admitted to beneficial, or general, or social membership in any society in such manner and upon such showing of eligibility as the laws of the society may provide, and any beneficial member may direct any benefit to be paid to such person or persons, entity, or interest as may be permitted by the laws of the society; provided, that no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable in conformity with the provisions of the contract of membership, and the member shall have full right to change his beneficiary, or beneficiaries, in accordance with the laws, rules, and regulations of the society.

Nothing contained in this chapter shall be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.13. Liability for Damages and Attorney's Fees

In all cases where a loss occurs and the fraternal benefit society liable therefor shall fail to pay the same within sixty (60) days after the demand therefor, such society shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney's fees for the prosecution and collection of such loss.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.14. Organization as Beneficiary

Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes, may be named as beneficiary.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 10.15. Certificate**

Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 10.16. Funds**

Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in Article 10.05 of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four (4%) per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four (4%) per cent per annum. Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund

sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 10.17. Investments**

Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any foreign society permitted or seeking to do business in this State which invest funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this chapter for the investment of funds. In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Board of Insurance Commissioners, file with the Board such bond or other written instrument to be prescribed and approved in terms and amount by such Board as will indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 10.18. Funds**

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(c) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued one year from the effective date of this Article, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 352, ch. 169, § 2.]

**Art. 10.19. Qualification**

Hereafter, only such corporation, society, order of voluntary association, having not less than five hun-

dred (500) members and ten (10) subordinate lodges, without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, may, provided that it has been in continuous operation for a period of not less than five (5) years immediately preceding the filing of its articles of incorporation or association as hereinafter provided, qualify as a Fraternal Benefit Society as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05, by filing with the Board duly certified articles of incorporation or association. Such articles shall set out:

1. The name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

2. The purpose for which it is formed, which shall not include more liberal powers than are granted by this Chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

Such articles of incorporation or association and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of Five Thousand Dollars (\$5,000.00), with sureties approved by the State Board of Insurance, conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization fails to qualify within one (1) year, shall be filed with such Board who may require such further information as it deems necessary, and if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, said Board shall so certify and retain and record or file the articles of incorporation or association and furnish the incorporators a preliminary certificate authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided.

Upon receipt of said certificate from the State Board of Insurance, said society may solicit from its members applications for insurance benefits for the purpose of completing its qualification and shall collect from each applicant the amount of not less than one (1) regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual

bona fide applications for death benefit certificates have been secured upon at least five hundred (500) lives for at least One Thousand Dollars (\$1,000.00) each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten (10) subordinate lodges or branches into which said five hundred (500) applicants have been initiated; nor until there has been submitted to said Board, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent (4%) per annum; nor until it shall be shown to the Board by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly payment as herein provided per One Thousand Dollars (\$1,000.00) of indemnity to be effected, which payments in the aggregate shall amount to at least Twenty-Five Hundred Dollars (\$2,500.00); all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall, during the period of completing qualification, be held in trust, and if such qualification is not completed within one (1) year as hereinafter provided, returned to said applicants.

The Board may make such examination and require such further information as it deems advisable; and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Board shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the qualification of such society at the date of such certificate. The Board shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

Unless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided, the preliminary certificate granted under the provisions of this article shall be null and void

after one (1) year from its date, or after such further period, not exceeding one (1) year, as may be authorized by the State Board of Insurance upon cause shown.

Provided, however, that this Article shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code and provided further, that the above provisions of this article shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force. The following provisions of this article shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965.

When any domestic society shall have discontinued business for the period of one (1) year, or has less than four hundred (400) members holding benefit certificates, its permanent certificate shall become null and void. Every such society shall have the power to make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such constitution and bylaws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 1188, ch. 551, § 1.]

#### Art. 10.20. Powers Retained; Amendments

Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Board and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.21. Mergers and Transfers

No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the Board of Insurance Commissioners, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said offi-

cers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds ( $\frac{2}{3}$ ) of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, said Board shall examine the same, and if it shall find such statements to be correct and the said contract to be in conformity with the provisions of this article, and that such merger or transfer is just and equitable to the members of each of said societies, the Board shall approve said merger or transfer, issue its certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by said Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.22. Annual License

Societies which are now authorized to transact business in this State may continue such business until their present licenses expire and the authority of such societies may thereafter be renewed annually for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance. The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

*Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.*

#### Art. 10.23. Admission of Foreign Society

No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners. Any such society shall be entitled to a license to transact business within this State upon filing with said Board a duly certified copy of its charter or articles of association; a copy of its Constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the Chairman of the Board as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Board of Insurance Commissioners, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the Board of Insurance Commissioners; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits

are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Board such other information as it may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, said Board shall issue a license to such society to do business in this State for the period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next following the date of said certificate, and such license shall, upon compliance with the provisions of this chapter, be renewed annually. The license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this chapter and have its assets invested as required by the laws of the state, territory, district, country or province where it is organized. For each such license or renewal the Society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. When said Board refuses to license any society or revokes its authority to do business in this State, the Board shall reduce its decision to writing and file the same in its office, and shall furnish a copy thereof, together with a statement of its reasons, to the officers of the society, upon request, and the action of said Board of Insurance Commissioners shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.24. Service of Process

Every society, whether domestic or foreign, hereafter applying for admission, shall before being licensed, appoint in writing the Chairman of the Board of Insurance Commissioners and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this State.

Copies of such appointment certified by said Chairman of the Board shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon said Chairman of the Board, or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society. No

such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty (30) days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said Chairman of the Board he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.25. Place of Meeting

Each domestic society shall have its principal office in this State, but may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.26. No Personal Liability

Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society. The same shall be payable only out of the funds of such society and in the manner provided by its law.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.27. Waiving Provisions of Law

The constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and all reports required by the provisions of this chapter shall be made and furnished by the officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State organization.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.28. Benefit Not Attachable

No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or

beneficiary or any other person who may have a right thereunder, either before or after payment. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.29. Constitution and Laws

Every society transacting business under this chapter shall file with the Board, a duly certified copy of all amendments of, or additions to, its Constitution and laws within ninety (90) days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.30. Annual Reports

Every society transacting business in this State shall annually, on or before the first day of March, file with the Board of Insurance Commissioners in such form as the Board may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Board may deem necessary to a proper exhibit of its business and plan of working. The Board may at other times require any further statement it may deem necessary to be made relating to such society.

In addition to such annual report, each society shall annually report to said Board a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society, and shall be filed with the Board of Insurance Commissioners within ninety (90) days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any

higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation.

Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year; or in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society.

The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contributions shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five (5%) per centum per annum.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.31. Provisions to Insure Security

If the valuation of the certificates, as hereinbefore provided, on December 31, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation as to the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the Board of Insurance Commissioners shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the

receipt of such notice shall show that the Society has failed to maintain the conditions required herein, said Board may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, or in the case of a foreign society, its license may be cancelled in the manner provided in this chapter. Any such society shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall, within two (2) years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject so far as stated rates of contributions are concerned, to the provisions of this chapter applicable to the organization of new societies. The net mortuary or beneficiary contributions and funds of new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.32. Accumulation Basis

In lieu of the requirements of the two preceding articles, any society accepting in its laws the provisions of this article may value its certificates on a basis herein designated "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the next rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this State, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts, no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund of contribution especially created or required for such purpose. Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society. Certificates issued, rerated or adjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this State shall be valued on such basis, herein designat-

ed the "Tabular Basis." If on the first valuation under this article a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve or from increased contributions or by an increase in the number of assessments applied to the society, as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws. If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society. The required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life, or other plan of insurance, specified in the contract, according to assumptions for mortality and interest recognized by the law of this State and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis. For this purpose individual bookkeeping accounts for each member shall not be required and all calculations may be made by the actuarial methods.

Nothing herein shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.33. Examination of Domestic Societies

The Board of Insurance Commissioners or any person it may appoint, shall have the power of visitation and examination into the affairs of any domestic society. It may employ assistants for the purpose of such examination, and it, or any person it may appoint, shall have free access to all the books,

papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and conditions of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the Board of Insurance Commissioners, and the examination shall be made at least once in three (3) years. Whenever after examination the Board is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one (1) year or more, shall have a membership of less than four hundred (400), or shall determine to discontinue business, said Board may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto. No such proceeding shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date named in said notice, to show cause why such proceedings should not be commenced.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.34. Application for Receiver, etc.

No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.35. Examination of Foreign Societies

The Board of Insurance Commissioners, or any person whom it may appoint, may examine any foreign society transacting or applying for admission to transact business in this State. The said Board may employ assistants, and it, or any person it may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. It may, in its discretion, accept in lieu of such examination the examination of the Insurance Department of the state, territory, district, province

or country where such society is organized. The actual expense of examiners making such examination shall be paid by the society, upon statements furnished by the Board. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused, until satisfactory evidence is furnished the Board of Insurance Commissioners relating to the condition and affairs of the society, and during suspension the society shall not write any new business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.36. No Adverse Publications

Pending, during or after an examination or investigation of any such society, either domestic or foreign, the Board of Insurance Commissioners shall make public no financial statement, report or finding, nor shall it permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement or report or finding, and to make such showing in connection therewith as it may desire.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.37. Revocation of License

When the Board of Insurance Commissioners on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, the Board shall notify the society of its findings, and state in writing the grounds of the Board's dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of said Board or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, the Board may revoke the authority of the society to continue business in this State. All decisions and findings of said Board made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.38. Examination of Certain Societies

Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree of insurance branch) or societies

which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding Five Hundred (\$500.00) Dollars to any one person or disability benefits not exceeding Three Hundred (\$300.00) Dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than One Hundred (\$100.00) Dollars or for disability benefits of more than One Hundred and Fifty (\$150.00) Dollars to any person in one (1) year. The Board of Insurance Commissioners may require from any society such information as will enable it to determine whether such society is exempt from the provisions of this law.

Any fraternal benefit society heretofore organized and incorporated and operating within the definition set forth in the first three articles of this chapter, providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 10.39. Exemption from Taxation

Every fraternal benefit society organized or licensed under the provisions of Chapter 8 of Title 78 of the Revised Civil Statutes of Texas or this Chapter is hereby declared to be a charitable and benevolent institution, and all of the funds of such fraternal benefit society shall be exempt from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes or<sup>1</sup> real estate and office equipment when used for other than lodge purposes.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

<sup>1</sup> Probably should read "on".

#### Art. 10.40. Conversion of Fraternal Benefit Society into Mutual or Stock Company

Sec. 1. Any fraternal benefit society with a lodge system and representative form of government, doing business in the State of Texas, may convert itself into a Mutual Benefit Company, or into an incorporated Stock Company, by conforming to the provisions of this act.

Sec. 2. When it shall be determined by the governing body of a Fraternal Benefit Society to submit

the proposed change to the members of the society, a meeting shall be called not less than ninety (90) days hence, and notice of such purpose with a general plan of the changes shall be mailed to each member or policyholder of the Society to their post office address as shown by the Society records, and all the subordinate lodges or branches of the Society, which notice shall be mailed at least forty (40) days prior to the day named in the call by the governing body. Within twenty (20) days after the receipt of such notice, each lodge or subordinate branch shall in Regular or Called Session pass upon the proposal and choose a representative or delegate, by whatever name the representative may be known, to the governing body for the State (if such Society be operating in more than one State). When the delegates or representatives so chosen to the State body shall have assembled they shall choose the requisite number of representatives or delegates to which the State may be entitled to the Supreme or Grand Lodge, if same be located in the State of Texas. Provided that no such society shall convert itself into a mutual benefit or incorporated stock company except upon such terms and conditions as in the opinion of the Board of Insurance Commissioners of Texas shall fully protect the rights and interests of its members and policyholders; and the plan of such change shall be submitted to and approved by the Board of Insurance Commissioners before it shall be submitted to the members or policyholders and the subordinate lodges or branches as hereinbefore provided.

Sec. 3. Pursuant to said notice and convening of the supreme governing body, there shall be adopted a resolution by delegates representing lodges which comprise not less than sixty (60%) per cent of the total membership of the association authorizing the conversion of the said fraternal benefit society into a mutual or stock life insurance company, and shall set forth or ratify a certificate of incorporation, amending the society's charter, and shall set forth:

(a) The name of the society, and the name of the new corporation by which it shall thereafter be known, which shall preferably be a continuation of the same name. Provided that if the new corporation shall change from the former name of the society, it shall not adopt the same name as that of any other such society doing business in this State, nor a name similar to that of any other society doing business in this State;

(b) The object of the corporation;

(c) The location of its principal office, which must be within the State of Texas; and the names of the principal officers of such corporation, who shall serve until their successors are elected and qualified;

(d) The period, if any, for the duration of the corporation;

(e) If the conversion is into a mutual benefit company there shall be set forth the amount of the free surplus which in amount and form shall

comply with Article 11.01 of this Code as amended; and such conversion shall comply with the requirements of Article 11.02 of this Code as amended, and upon such conversion such company shall be subject to all of the provisions of Chapter 11 of this Code. If the conversion is into an incorporated stock company, there shall be set forth the amount of the surplus and the amount of the capital stock authorized, the number of shares into which it is divided, and the amount of capital stock to be immediately paid in, and in amount and form such capital and surplus shall be in conformity with Articles 3.02 and 3.02a of this Code, as amended; and such conversion shall comply with the requirements of Article 3.04 of this Code as amended, and upon such conversion such company shall be subject to all of the provisions of Chapter 3 of this Code.

Sec. 4. The certificate of incorporation so adopted or amended shall be filed with the Board of Insurance Commissioners and be incorporated in the charter of the proposed Company.

Sec. 5. A report of said meeting certified to by the presiding officers under the corporate seal of such Society shall also be filed with the Board of Insurance Commissioners.

Sec. 6. If such Fraternal Benefit Society be converted into a Stock Life Insurance Company, each and every policyholder, certificate holder, or other member of such Society, shall have a preference right for ninety (90) days after such determination to subscribe for the proportion of the total capital stock offered for sale, which the amount of his insurance bears to the Society's total insurance in force at the time of the conversion, which time shall be that at which the supreme governing body authorize the change.

Before any of the stock shall be offered for public sale, the membership of the Society shall have a preference in the purchase thereof, provided that no one member shall be allowed to subscribe or purchase more than twenty-five (25%) per cent of the capital stock of the new company, nor shall he subscribe or be allowed to purchase more than ten (10%) per cent of the capital stock of the new company if there be other members applying in writing for the purchase of stock whose subscriptions are not filled. If the membership shall not have subscribed for the total capital stock authorized, then others who were not members of the Society at the time of the conversion may be permitted to subscribe for stock and be allowed equal rights in the ownership thereof, with all other stockholders. It shall be the duty of such Fraternal Benefit Society desiring to be converted into a Stock Company to advise every member or policyholder of his right to subscribe for and purchase the stock of such Stock Life Insurance Company and of the amount of such stock for which he is entitled to subscribe and all

other terms and conditions, in a form to be approved by the Board of Insurance Commissioners within ten (10) days after such Society shall be voted to so convert itself into a Stock Company. Proof of depositing a letter addressed to all members or policyholders, conveying the advice, in the approved form as herein provided for, shall be deemed proof of compliance with the foregoing requirement.

Sec. 7. When such Fraternal Benefit Societies shall have complied with the provisions of this article and the other laws of this State regulating the incorporation of Life Insurance Companies, and shall have received from the Board of Insurance Commissioners its charter or certificate of authority to transact business as a Stock Life Insurance Company, its reorganization and conversion into such Stock Company shall be complete. Such reorganization and converted corporation shall be deemed in law to have all the rights, privileges, powers, and authority of any other Stock corporation organized for doing a Life Insurance business in the State of Texas, and controlled by the laws applying thereto. The new corporation shall be deemed in law to be a continuation of the business of the Fraternal Benefit Society when the reorganization and conversion shall have been accomplished by the formation of a new Company or by amendment to its former charter, and such reorganized corporation shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action theretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society, and the title to any real estate by deed or otherwise vested in the former Fraternal Benefit Society shall forthwith vest in such organized converted corporation, and the title thereto shall not in any way be impaired by reason of such change or reincorporation.

Sec. 8. The rights of all members, policyholders, creditors, and the standing of all claims under the former Fraternal Benefit Society shall be preserved unimpaired under the new corporation, and all debts, liabilities, and duties of the former Fraternal Benefit Society shall thenceforth attach to the reorganized corporation, and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, and all outstanding benefit certificates or policies issued by the said Fraternal Benefit Society shall be valid obligations of the new incorporation without the issuance of new policies.

Sec. 9. Such organized and converted corporation shall be obliged to carry out and perform all of the obligations of every kind and character owing by the former Fraternal Benefit Society to the holders of its policies or beneficial certificates, and the same

may be enforced against it to the extent as if said policies and beneficial certificates had been issued by it after conversion. Any pending suits wherein the former Fraternal Benefit Society was a party shall be unaffected by the conversion thereof and shall be prosecuted by or against such reorganized and converted corporation the same as if the conversion had not taken place.

Sec. 10. The members of such Fraternal Benefit Society, or the policyholders in the chartered incorporated Company, may form local clubs for social and charitable purposes, but the same shall have no connection with the management of the affairs of the corporation or affect its liability or the insurance in effect.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 16.]

#### Art. 10.41. False Statements; Penalty

Any person, officer, member or examining physician of any society authorized to do business under the laws of this State relating to fraternal benefit societies who wilfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this law, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both. [1925 P.C.]

#### Art. 10.42. Unlawfully Soliciting Membership; Penalty

Whoever solicits membership for, or in any manner assists in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized by law to do business in this State, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

#### Art. 10.43. Soliciting Without Certificate of Authority; Penalty

Whoever solicits for or organizes lodges of such association as are defined to be a fraternal benefit society under the laws of this State, without first obtaining from the Commissioner of Insurance a certificate of authority showing that the association has complied with the provisions of such laws and is entitled to do business in this State, shall be fined not less than one hundred nor more than two hundred and fifty dollars, or be imprisoned in jail for not less than three nor more than six months, or both.

[1925 P.C.]

#### Art. 10.44. Exceptions

No provision of the preceding articles shall prohibit any member of a local or subordinate lodge from soliciting any person to become a member of any local or subordinate lodge already in existence, nor apply to any members of any local or subordinate lodge who participate in, direct or conduct the organization or establishment of any local or subordinate lodge within the limits of the county of their residence or lodge district.

[1925 P.C.]

#### Art. 10.45. General Penalty

Any officer, agent or employé of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies, shall where the penalty is not provided for in the preceding articles of this chapter, be fined not exceeding two hundred dollars.

[1925 P.C.]

### CHAPTER ELEVEN. MUTUAL LIFE INSURANCE COMPANIES

#### Article

- 11.01. Incorporation.
- 11.02. Application, Charter and Certificate of Authority.
- 11.03. Directors.
- 11.04. Annual and Special Meetings of Policyholders.
- 11.05. Bonds of Officers.
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#### Art. 11.01. Incorporation

Sec. 1. Nine or more persons, residents of this State, may form a mutual life insurance company for the purposes of insuring the lives of individuals on the mutual level premium, legal reserve plan, and any such company heretofore or hereafter created may issue, combined or separately, life, health and accident insurance policies, subject to the provisions of this chapter, by executing and acknowledging articles of incorporation for that purpose. Such articles of incorporation shall set forth:

1. The name and residence of each incorporator;
2. The name of the proposed company, which shall contain the words "Mutual Life Insurance Company" as a part thereof; and the name selected shall not be so similar to that of any

other insurance company as to be likely to mislead the public;

3. The location of the principal office from which the business of the company is to be transacted;

4. The number of directors and the name and residence of each one who is to serve until the first regular election of directors;

5. The amount of its free surplus which shall, at the time of incorporation, be not less than Two Hundred Thousand (\$200,000.00) Dollars. Such free surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate as a part of its free surplus; provided, however, that twenty-five (25%) per cent of the minimum free surplus may be invested in first mortgage real estate loans. Notwithstanding any other provision of this Code, a minimum of One Hundred Thousand (\$100,000.00) Dollars of such free surplus shall at all times be maintained in cash or in the classes of investments described in this article. After the granting of charter the free surplus in excess of such One Hundred Thousand (\$100,000.00) Dollars may be invested as otherwise provided in this Code for stock companies.

Sec. 2(a). From and after the effective date of this Act the surplus requirement of Paragraph 5 of Section 1 of Article 11.01 of this Code shall be the minimum surplus requirement for any company which is subject to the provisions of Chapter 11 of this Code as amended; provided, however, that no such company which was licensed and doing business in this State prior to May 1, 1955 shall be required to increase the amount or convert the class or form of its existing surplus to comply with the surplus requirement of said Paragraph 5 of Section 1 of Article 11.01 of this Code as amended, nor shall any such company be denied the right of writing new business if such company does not maintain the surplus stated in Article 11.17 of this Code, so long as all other laws are complied with.

(b) Each such mutual life insurance company shall have the right to apportion to its free surplus all or any portion of the contingency reserves provided for in Article 11.11 of the Insurance Code while and whenever the free surplus of such company shall be less than One Hundred Thousand (\$100,000.00) Dollars.

(c) Any mutual life insurance company heretofore organized or operating under the provisions of Chapter 11 of this Code may convert into a stock legal reserve life insurance company subject to the following conditions:

1. There shall be contributed in cash of the United States the sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus, which contributed capital and surplus shall be in addition to all assets of such company at the date of conversion;

2. Such conversion shall only be made on a vote of the policy holders of such company at a meeting called for such purpose. Pursuant to such policy holder authorization, the Board of Directors and officers of such mutual legal reserve life insurance company shall amend its existing charter or articles of incorporation so as to comply with the requirements of Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof;

3. After compliance with the provisions hereof and approval of the proposed conversion by the Attorney General of the State of Texas and the Board of Insurance Commissioners, such company shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (2) declare or pay any cash dividend unless and until the capital and surplus of such stock legal reserve life insurance company shall be increased to not less than the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code as amended;

4. Any such company so converted shall within ten years from the date of its conversion increase its capital and surplus to not less than the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners;

5. From and after the date of such conversion such legal reserve life insurance company shall be governed by the provisions of Chapter 3 of this Code, as amended, except as otherwise herein provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 17.]

#### Art. 11.02. Application, Charter and Certificate of Authority

Sec. 1. As a condition precedent to the granting of a charter of any such insurance company, the incorporators shall file with the Board of Insurance Commissioners the following:

1. An application for charter on such form and include therein such information as may be prescribed by the Board;

2. The articles of incorporation as provided in this Code;

3. An affidavit made by two (2) or more of its incorporators that such company is possessed of at least Two Hundred Thousand (\$200,000.00) Dollars free surplus, as required by law, which affidavit shall state that the facts set forth in the application and articles of incorporation are true and correct and that the free surplus is the bona fide property of such company. The Board of Insurance Commissioners may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter, or follow the procedure hereinafter set forth;

4. A charter fee of Twenty-five (\$25.00) Dollars.

When such application for charter, articles of incorporation, affidavit and charter fee are filed with the Board of Insurance Commissioners, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing, and shall furnish a copy of such notice to the Attorney General of Texas and to all interested parties, including any other parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this State, including the right to be represented by counsel.

In considering any such application, the Board shall within thirty (30) days after public hearing, determine whether:

- (a) The minimum free surplus, as required by law, is the bona fide property of the company;
- (b) The proposed officers, directors and managing executive have sufficient insurance experience, ability and standing to render success of the proposed company probable;
- (c) The applicants are acting in good faith.

If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing, giving the reason therefor. Otherwise, the Board shall approve the application and submit such application together with the articles of incorporation

and the affidavit to the Attorney General for examination. If the application, articles of incorporation, affidavit and the procedure and action thereon shall be found by the Attorney General to be in accordance with the laws of this State, he shall attach thereto his certificate to that effect, whereupon all such documents shall be deposited with the Board.

Sec. 2. The Board shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If it finds that the company has complied with all applicable laws and is possessed of a free surplus of not less than Two Hundred Thousand (\$200,000.00) Dollars and that such surplus is in the custody of the officers either in cash or classes of investments as provided in Paragraph 5 of Article 11.01 of this Code, as amended, it shall issue to such company a certificate of authority to transact a life, health or accident insurance business within this State as such officers may apply for and as may be authorized by its charter issued pursuant to Article 11.01 of this chapter; which certificate shall be issued for a period of not more than fifteen (15) months and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law. The foregoing requirement as to free surplus shall apply to mutual assessment companies or associations which may convert to mutual legal reserve companies under the provisions of Article 11.10 of the Insurance Code as amended. No original or first certificate of authority shall be granted, except in conformity herewith.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1010, ch. 415, § 1; Acts 1955, 54th Leg., p. 916, ch. 363, § 18.]

*Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.*

#### Art. 11.03. Directors

The business of a mutual life insurance company shall be controlled and directed by a board of directors consisting of not less than five (5) members, who shall be elected annually as provided in this chapter. The directors who are to serve until the first annual election shall be named in the charter, and they shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. The board of directors shall elect the officers of the company, which shall be a president, and such number of vice presidents as the by-laws may provide; a secretary, a treasurer, a medical director and such other officers as the by-laws may provide for; and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the company until the date of its first annual meeting shall be adopted by the board of directors at their first meeting after the certifi-

cate of authority shall be issued authorizing the company to transact the business of a mutual life insurance company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.04. Annual and Special Meetings of Policyholders

There shall be an annual meeting of all the policyholders of each mutual life insurance company at the home office of such company or at such other place as may be properly announced to the policyholders, on the fourth Tuesday in April after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding year, and at which bylaws for the government of the company, not inconsistent with the provisions of this Chapter or with the laws of this state may be adopted, and at which the existing bylaws may be repealed or amended. Provided, however, the bylaws of the company may set an annual meeting date on any day prior to April 30 in each year; and provided further, that when the Board of Directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of policyholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of policyholders. At an annual or special meeting, each policyholder shall be entitled to one vote for each Five Hundred Dollars (\$500.00) of insurance held by him. Any policyholder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual or special meeting.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 273, ch. 114, § 1.]

#### Art. 11.05. Bonds of Officers

The president, secretary and treasurer shall each give bond for the protection of the policyholders in amount and with securities to be approved by the Board of Insurance Commissioners, conditioned for the faithful performance of their respective duties.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.06. Annual Statement; Renewal Certificate

Such mutual life insurance companies shall file their annual statements with the Board of Insurance

Commissioners, and receive from the Board their certificates of authority to transact the business of life, health, and accident insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.07. Examination

All of the provisions of Article 1.15 and Article 1.16 relative to the examination of companies shall apply to companies formed under this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 309, ch. 141, § 1a.]

#### Art. 11.08. Agents and Commissions

Any such mutual life insurance company which has received authority from the Board of Insurance Commissioners to transact business in this State shall receive from such Board, upon written request therefor, a certificate of authority for each of its agents in this State. Contracts between such companies and such agents shall not provide for commissions or other compensation to such agents in excess of the expense loading in the premiums of policies issued upon the applications procured by such agents, collected therefor, and paid to the company in cash.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.09. Repealed by Acts 1963, 58th Leg., p. 1117, ch. 434, § 10, eff. August 23, 1963

The repealed article, "Annual Valuation of Policies," was derived from Acts 1951, 52nd Leg., ch. 491; Acts 1959, 56th Leg., p. 960, ch. 448, § 3, and provided:

"(A) The State Board of Insurance shall annually make valuations of all outstanding policies of mutual life insurance companies as of December 31st of each year. In making such valuation the Board may use group methods and approximate averages for fractions of a year or otherwise. In making such valuation the reserve liability of all outstanding policies of sub-standard insurance shall be computed in accordance with the laws relating specifically to such policies. In making such valuation the reserve liability of all other outstanding policies of insurance and annuity contracts shall be computed on the net premium basis and in accordance with their terms and the following rules:

"(1) As respects policies issued prior to January 1, 1948, the computation shall be on the basis of the American Experience Table of Mortality, with interest at such rate as may be specified in such policy contracts.

"(2) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (I) the specified rate of interest shall not exceed three and one half per cent (3½%) per annum, (II) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality,

the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or the Commissioners 1958 Standard Ordinary Mortality Table, and (III) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-standard Industrial Mortality Table.

"(3) As respects annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

"(4) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under the preceding paragraph (2) and specified in the respective policies, but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the insured.

"(B) If the gross premium charged by any mutual life insurance company on any policy or contract is less than the net premium for the policy or contract, according to the mortality table, rate of interest and method used in computing the reserve liability thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium paying period."

See, now, the Standard Valuation Law, art. 3.48.

#### Art. 11.10. Mutual Assessment Companies May Convert

Mutual assessment companies and associations organized and operating under the laws of this State on May 17, 1943 which desire to convert to a mutual legal reserve company, and qualify under Chapter 11 of the Insurance Code, shall be required at the time of conversion to be possessed of free surplus of not less than Two Hundred Thousand (\$200,000.00) Dollars. In order to convert, such company shall comply with the provisions of Articles 11.01 and 11.02 of the Insurance Code as amended, and upon such conversion shall be subject to all of the provisions of Chapter 11 of this Code.

Nothing in this article or in the provisions of this chapter or Chapter 3 of this Code shall ever be construed to mean that any of the associations or similar concerns, by whatsoever name or class designated, whether specifically named herein or not,

shall be required by the Board of Insurance Commissioners to convert to mutual legal reserve companies as herein authorized unless they voluntarily decide to do so; and if such associations have not heretofore voluntarily decided to come under this chapter, and if such associations do not hereafter so voluntarily decide to come under this chapter, then this chapter shall not in any way apply to any such associations.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1010, ch. 415, § 2; Acts 1955, 54th Leg., p. 916, ch. 363, § 19.]

#### Art. 11.11. Contingency Reserve

Any mutual, level premium, legal reserve life insurance company organized and doing business under the provisions of this Chapter may accumulate and maintain a contingency reserve, over and above all of its reserves and liabilities required or specifically permitted by the provisions of this Chapter, in an amount not exceeding Ten Thousand Dollars (\$10,000), or an amount equal to the sum of ten per cent (10%) of all of its policy reserves and policy liabilities, plus one per cent (1%) of the amount of its life insurance then in force, if such sum be greater than Ten Thousand Dollars (\$10,000), but in no event to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000), or ten per cent (10%) of all of its policy reserves and policy liabilities, whichever shall be greater. The term "policy reserves and policy liabilities" as used in this Section of this Act shall include only its reserves on outstanding life insurance policies and annuity contracts, contracts issued as supplemental thereto or in connection therewith or provisions included therein insuring against disability or against death by accident or accidental means, and including liabilities required under optional modes of settlement, and for dividends left on deposit at interest, after deducting the net value of its risks reinsured by other solvent assuming insurers, but this shall not affect any existing contingency reserve held by any such company on the effective date of this Act, save that whenever and as long as such existing contingency reserve shall exceed the limit above-mentioned, it shall not be entitled to maintain any additional contingency reserve.

The Board of Insurance Commissioners may, for good cause shown by an official order, permit any such company to accumulate and maintain a contingency reserve in excess of the maximum amount hereinbefore prescribed, for a period, not exceeding one (1) year under any one order, which shall be specified in such order. The Board of Insurance Commissioners shall state in such order its reasons therefor.

All such contingency reserves as provided for by this Act shall be invested according to law under the supervision of the Board of Insurance Commissioners and shall be used exclusively for the payment of death claims and dividends to policyholders. All interests and earnings from such investments in excess of the maximum contingency reserves as provided for in this Act shall be paid in dividends to policyholders according to present laws.

The contingency reserve described in this Article shall be deemed to be unassigned surplus, and in addition to any free surplus elsewhere required or allowed, may be so designated in all financial statements and reports and treated as such.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 814, ch. 301, § 1.]

#### Art. 11.12. Surplus and Dividends

Each such company shall make an annual accounting and apportionment of divisible surplus to each policyholder, beginning not later than the end of the second policy year on all policies issued; and each such policyholder shall be entitled to and credited with or paid such portion of the entire divisible surplus as may be equitably apportioned to his policy. Upon the 31st day of December of each year, or as soon thereafter as may be practicable, each such company shall truly ascertain the surplus earned by it during such year; and after setting aside from such surplus such portion thereof as the Board of Insurance Commissioners may approve for retirement of any unpaid advances theretofore made pursuant to Article 11.16 of this chapter, and after deducting the contingency reserve and the amount of earned surplus, if any, apportioned to free surplus as provided for in this chapter, it shall apportion to each of its policies upon which all premiums due and payable for at least two (2) years have been paid, an equitable proportion of the remainder of such surplus, and shall immediately submit a detailed report of such apportionment under oath of its president or secretary to the Board of Insurance Commissioners. If such Board shall find such apportionment to be equitable and just to the policyholders and in accordance with the provisions of this chapter, it shall approve the same, and it shall become effective. If it shall not approve such apportionment, it shall make such changes therein as it shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by such Board shall become effective. Each dividend declared as aforesaid shall be paid in cash, or in the equivalent of its cash value in any option stated in the policy and selected by the policyholder, notice of which selection by the policyholder shall be given to the company in writing.

It is further provided that each such company heretofore organized or converted and operating under the provisions of Chapter 11 of this Code which does not at the effective date of this amendment to this Code maintain the minimum free surplus specified in Article 11.01 as amended shall have the right, subject to the limitations herein set forth, to pay dividends but shall not be obligated by the provisions of this article to pay dividends to the policyholders until the minimum free surplus specified in Article 11.01 as amended has been acquired or accumulated by such company. The divisible surplus available for payment of dividends shall not include:

(a) Any portion of the free surplus, required by Article 11.01 as amended, of companies organized after the effective date of this amendment;

(b) Any portion of the free surplus of any company theretofore apportioned from earned surplus, transferred from contingency reserves or otherwise accumulated or acquired by such company as a part of its free surplus;

(c) That portion of the earned surplus for the preceding calendar year in excess of seventy-five (75%) per cent thereof whenever the free surplus of any company shall be less than Twenty-five Thousand (\$25,000.00) Dollars; it being the intent and purpose of this clause that each company whose free surplus is less than Twenty-five Thousand (\$25,000.00) Dollars shall be obligated to apportion a minimum of twenty-five (25%) per cent of the net earned surplus for the preceding calendar year to the free surplus of such company until such company shall have acquired or accumulated a free surplus of at least Twenty-five Thousand (\$25,000.00) Dollars.

No such company shall ever be required by the provisions of this article to pay dividends to policyholders at any time when the free surplus theretofore accumulated or acquired by said company shall be impaired.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1010, ch. 415, § 3; Acts 1955, 54th Leg., p. 916, ch. 363, § 20.]

#### Art. 11.13. Policies

Mutual life insurance companies are authorized to transact business throughout this State and in other states to which they may be admitted; they shall issue no policies except upon the participating plan with dividends payable annually as provided in this chapter; the form of all policies issued by any such company shall be approved by the Board of Insurance Commissioners, and all such policies shall have plainly printed on both the face and the reverse sides thereof the words, "The form of this policy is approved by the Board of Insurance Commissioners of the State of Texas," and the Board shall revoke the certificate of authority of any such company which shall issue any policy except upon such form so approved. No such company shall issue any policy or policies by which, after deducting reinsurance, if any, it shall be bound for more than Five Thousand (\$5,000.00) Dollars upon any one life at any time when the total amount of its insurance in force is less than Ten Million (\$10,000,000.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.14. Table of Guaranteed Values

Each policy issued by such company shall contain a table of guaranteed values, which shall become non-forfeitable not later than upon the payment of the third full annual premium; such tables of values

shall be drawn in accordance with the law governing life, health and accident insurance companies.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.15. Incurring Debts

No mutual life insurance company shall have the power except as provided in this chapter, to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall, in any event be subject to execution upon a judgment therefor.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.16. Advances to Company

Any officer or director of a mutual life insurance company or any person so authorized in Article 21.27 of this code, may advance to such company any sum of money for the purpose of promoting or conserving its business, or to enable it to comply with any requirement of the law; and such money, together with such interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.17. Liabilities

Any such insurance company transacting business within this State shall at all times have and maintain a minimum free surplus of not less than One Hundred Thousand (\$100,000.00) Dollars and if such minimum free surplus shall become impaired to the extent of thirty-three and one-third (33 $\frac{1}{3}$ %) per cent thereof, computing its liabilities in the manner provided by the laws of this State, it shall make good such impairment within sixty (60) days; and failing to make good such impairment within said time shall forfeit its right to write any business in this State until said impairment shall have been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its above mentioned minimum free surplus shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in the manner provided by the laws of this State for the computation of such reserve liability. No company shall write new business unless it is possessed of the minimum free surplus required by this article, except to the extent it may be otherwise expressly authorized by this Code to do so.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1010, ch. 415, § 4; Acts 1955, 54th Leg., p. 916, ch. 363, § 21.]

#### Art. 11.18. Investment of Funds

Mutual life insurance companies shall invest their funds in accordance with the provisions of the third chapter of this code, concerning investments of life, health and accident insurance companies in this State; all moneys of mutual life insurance companies, coming into the hands of any officer thereof, when not invested as prescribed, shall be deposited in the name of such company in some bank which is subject to either state or national regulation and supervision, and which has been approved by the Board of Insurance Commissioners as a depository therefor.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 11.18-1. Investment of Funds; Penalty

Mutual life insurance companies shall invest their funds in accordance with the provisions of the statutes concerning investments of life insurance companies in this State; all moneys of mutual life companies, coming into the hands of any officer or officers thereof, when not invested as prescribed by said laws, shall be deposited in the name of such company or companies in some bank or banks which are subject to either State or national regulation and supervision, and which have been approved by the Commissioner of Insurance as depositories therefor. Any officer or director of any such company who shall knowingly and wilfully violate or assent to the violation of the provisions of this article shall be imprisoned in the penitentiary not less than one nor more than five years.

[1925 P.C.]

#### Art. 11.19. Other Laws to Govern

The provisions of Chapter 3 of this Code, when not in conflict with the Articles of this Chapter, shall apply to and govern mutual life insurance companies organized under the provisions of this Chapter, provided, however, that when any mutual life insurance company organized under the provisions of this Chapter has a surplus equal to or greater than the minimum of capital and surplus required of capital stock companies under the provisions of Article 3.02 of Chapter 3, Insurance Code of the State of Texas, Revised Civil Statutes of Texas of 1925, the following provisions of Chapter 11 only shall apply to such mutual companies: 11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 11.10, 11.11, 11.12, 11.14, 11.16, 11.17, 11.18, 11.19, 11.20, and 11.21. On all other matters the provisions of said Chapter 3 shall apply to and govern such mutual life insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 546, ch. 171, § 1; Acts 1963, 58th Leg., p. 1117, ch. 434, § 11, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 219, ch. 121, § 1, eff. May 5, 1967.]

#### Art. 11.20. Mergers and Consolidations

Sec. 1. Any two or more mutual life insurance companies may merge into one of such companies,

domestic or foreign, or consolidate into a new mutual life insurance company, domestic or foreign, by compliance with the procedures provided in this Article.

Sec. 2. When it shall be determined by a majority vote of the Board of Directors, respectively, of two or more mutual life insurance companies, to either merge or consolidate, said Boards of Directors shall prepare a plan of merger or consolidation, as the case may be, and file such plan with the Commissioner of Insurance for approval. Such plan may contain provisions for future apportionment of then existing or prospective accumulations, or both, of divisible surplus, or any other equitable arrangement, whereby the equitable interests, if any, of affected policyholders may be adjusted.

Sec. 3. As soon as practicable after such filing, the Commissioner of Insurance shall hold a hearing on the question of whether he should approve such plan. As soon as practicable after such hearing, said Commissioner shall approve such plan unless he finds that such plan:

- (1) is contrary to law, or
- (2) effectuation of such plan would not be in the best interest of the policyholders of any one or more domestic mutual life insurance company which is a party to such plan, or
- (3) effectuation of such plan would substantially reduce the security of or service to be rendered to policyholders, whether residents of this state or elsewhere, of any domestic mutual insurance company which is a party to such plan.

In making such decision, the Commissioner of Insurance may consider all facts, elements, matters and financial conditions relating thereto, including but not limited to past, present and prospective operations and accumulations of said companies desiring to merge or consolidate.

If the Commissioner of Insurance disapproves such plan, he shall within a reasonable time after such hearing specify in detail his reasons therefor and so notify all of the parties to such plan. If the Commissioner of Insurance approves such plan, he shall so notify all of the parties thereto, whereupon each board of directors of each domestic company party thereto shall proceed to submit such plan for adoption or rejection to its respective policyholders as hereinafter provided.

Sec. 4. As soon as practicable after receipt of notice of approval of a plan of merger or consolidation to which a company is a party, each domestic party thereto shall cause such plan to be submitted to a vote of its policyholders at a meeting thereof, which meeting may be either an annual or a special meeting. Written or printed notice shall be given to each policyholder, addressed to his last known address, in accordance with the applicable bylaws, but not less than fifteen (15) days before such meeting. And each such notice shall specifically state that at

least one of the purposes of such meeting is to vote upon such plan, a copy of which shall accompany such notice. At each such meeting of policyholders of a domestic party to such plan, each policyholder shall: (i) be entitled to a number of votes determined as provided in Article 11.04 of this Chapter of this Code, and (ii) may vote in person, by proxy to whomever the policyholder may designate in writing, or by mailed ballot. The plan of merger or consolidation shall be considered approved by the policyholders of such company upon receiving the affirmative vote of at least two-thirds ( $\frac{2}{3}$ ) of the votes cast at such meeting on such question.

Sec. 5. (a) Upon the required approval of such plan by the policyholders of each domestic company which is a party to such plan and, if one or more foreign companies is a party thereto, upon the approval thereof in compliance with such foreign law or laws as may be applicable thereto, the president or a vice-president and the secretary or an assistant secretary of each company which is a party to such plan shall execute and file with the Commissioner of Insurance an affidavit that such plan has been approved as herein required.

(b) If the Commissioner of Insurance finds that such affidavit conforms to law, he shall endorse thereon the word "Filed," and the date of filing thereof; and

(1) if the plan be a plan of merger, the Commissioner shall then execute and deliver a Certificate of Merger to the surviving company or its representative; or

(2) if the plan be a plan of consolidation, the Commissioner shall execute and deliver a Certificate of Consolidation to the new company when such new company shall be issued a charter and license upon submission of proper articles of incorporation to the Commissioner of Insurance, and upon his approval together with approval of the Attorney General in accordance with the procedure now required for the issuance of a new charter, and proof that the new company has surplus of not less than the surplus of the mutual life insurance company involved in such consolidation having the largest surplus.

Sec. 6. Upon the issuance by the Commissioner of a Certificate of Merger or Consolidation, as the case may be, the merger or consolidation referred to in such certificate shall thereupon be deemed effective unless some subsequent date be specifically stated as the effective date thereof in the plan therefor.

Sec. 7. As of the time that such merger or consolidation is deemed effective:

(1) All policies of insurance outstanding against any company so merged or consolidated shall be deemed to be assumed by the new or surviving mutual life insurance company on the same terms and under the same conditions as if such policies had continued in force against the original issuer thereof and the new or surviving

company shall carry out the terms of such policies and be entitled to all the rights and privileges thereof and the reserves and surplus accumulating on such policy prior to such merger or consolidation.

(2) All the rights, franchises and interests of the companies so merged or consolidated, in and to every species of property, real, personal and mixed, and the things in action thereunto belonging, shall be deemed as transferred to and vested in the surviving or new mutual life insurance company, without any other deed or transfer; and simultaneously therewith the surviving or new mutual life insurance company shall be deemed to have assumed all of the liabilities of the merged or consolidated companies;

(3) All investments of each mutual life insurance company which was a party to such merger or consolidation that were authorized when made by the laws of the state in which such mutual life insurance company was organized, as proper securities or assets, including real property, for investment of funds of any mutual life insurance company and which investments are taken over by the surviving or new company by virtue of such merger or consolidation under the provisions of this Act, shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or surviving company, provided such investments are approved by the Commissioner of Insurance in this state, and the same are taken over on terms satisfactory to said Commissioner; provided, however, that in the event the new or surviving company acquires by virtue of such merger or consolidation real estate or property beyond or in excess of that permitted by the applicable Articles pertaining to owning or holding real estate, such company shall sell or dispose of all such excess real estate within the time specified in such applicable Articles unless it shall procure a certificate from said Commissioner that the interest of such company will materially suffer from the forced sale or disposition thereof, in which event the time for the sale or disposition thereof may be extended to such time as the Commissioner of Insurance shall direct in such certificate. Provided further, that this Section will not preclude the designation and use of such acquired excess real estate as branch offices in accordance with the applicable provisions of this Code.

(4) The divisible surplus of each company which is a party to such merger or consolidation which was available for apportionment to policyholders in accordance with the provisions of Article 11.12 of this Chapter of this Code immediately prior to the effectiveness of such merger or consolidation shall continue to be available to the policyholders of the surviving or new company in accordance with the provisions of such Article.

Sec. 8. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state.

[Acts 1967, 60th Leg., p. 219, ch. 121, § 2, eff. May 5, 1967.]

Section 1 of the act of 1967 amended article 11.19; section 3 thereof is codified as article 11.21; sections 4 and 5 provided:

"Sec. 4. If any Section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining Sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 5. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only."

#### Art. 11.21. Total Direct Reinsurance Agreements

Sec. 1. Total direct reinsurance agreements may be made and entered into between any domestic mutual life insurance company and any other life insurance company, domestic or foreign, provided: (a) the assuming company is authorized to transact the kinds of insurance provided by the policies assumed; and (b) no total direct reinsurance agreement shall be made until the contract therefor has been submitted to and approved by the Commissioner of Insurance as protecting fully the interests of the policyholders of any domestic insurer.

Sec. 2. Total direct reinsurance agreements, whereby all policies of any ceding domestic mutual life insurance company, are totally assumed by another company, must first be so approved by the Commissioner of Insurance and thereafter by such affected policyholders of the domestic company in like mode and manner as is required under the provisions of Article 11.20 of this Chapter of this Code for policyholder approval of a merger or consolidation agreement. Upon consummation of any such total direct reinsurance agreement, the assuming company shall be entitled to all the rights, privileges and benefits accorded under Section 7, of Article 11.20 of this Chapter of this Code, the same as though such business had been assumed by merger or consolidation.

[Acts 1967, 60th Leg., p. 221, ch. 121, § 3, eff. May 5, 1967.]

### CHAPTER TWELVE. LOCAL MUTUAL AID ASSOCIATIONS

#### Article

- 12.01. Scope of Chapter.
- 12.02. Definition.
- 12.03. Territorial Limitation of Association.
- 12.04. Independent Associations.
- 12.05. Organization.
- 12.06. Names of Association.
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- 12.13. Dissolution and Forfeitures.
- 12.14. Winding Up Affairs.
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- 12.16. Exemptions.
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#### Art. 12.01. Scope of Chapter

This chapter and Chapter 14 of this code shall apply to and regulate the business of local mutual

aid associations, including those associations defined in Article 14.37 of Chapter 14 of this code operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members, and shall comprehend and include all societies and associations of any sort operating an insurance business and paying such benefits where funds are provided by assessments upon the members as needed, except those exempt under this chapter and Chapter 14 aforesaid.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.02. Definition

Any person or persons desiring to organize a local mutual aid association to be operated upon the assessment as needed or similar plan or a burial company, association or society as defined in Article 14.37, Chapter 14 of this code, shall be permitted to do so upon the terms and conditions hereinafter set forth and by complying with the provisions of this chapter. No person, firm or corporation shall hereafter operate in this State any sort of a local mutual aid society or association paying a death benefit or other benefits and providing its funds by assessments as needed, except under the provisions hereof, or under other specific provisions of the laws of this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.03. Territorial Limitation of Association

Any local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, shall be permitted to operate in any county in this State. If the Articles of Association of such association provides for its operation in a limited portion or area of this State, such local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, may hereafter amend such Articles of Association so as to permit it to operate and do business on a statewide basis, and after such amendment it shall be entitled to receive a certificate of authority covering all such territory, provided such association shall not be possessed of a permissive deficiency reserve as provided in Article 14.15 of this Chapter 14 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1967, 60th Leg., p. 1830, ch. 708, § 1, eff. June 17, 1967.]

Acts 1967, 60th Leg., p. 1830, ch. 708, § 2 amended article 22.05, and section 3 thereof provided: "If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

#### Art. 12.04. Independent Associations

There shall be no connection between any two associations operating under this chapter and no one association shall contribute anything by way of salary or compensation to any executive officer for the purposes of such other association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.05. Organization

Any number of persons not less than five, all of whom must be citizens of the United States and residents of the territory to be embraced within

their field of operation may organize a local mutual aid association or an association as defined in Article 14.37 of Chapter 14 of this code in the following manner:

(1) They shall draw up articles of association which shall be executed in triplicate, acknowledged as required for instruments intended to be recorded, and which shall state:

(a) The name of the association, which must be distinctly different from associations operating in the same radius.

(b) The location of the principal office and the territory to which its operation shall be confined.

(c) The object for which the association is created, including the upper and lower age limits of persons to whom benefit certificates may be issued.

(d) Titles of the officers of the association and the number of directors, and the names of the persons who will, pending permanent organization, fill such offices.

(2) The said articles of association so executed shall be presented to the Board of Insurance Commissioners of the State of Texas, together with the application for a permit to solicit members, and together with the bond in a sum of Five Thousand (\$5,000.00) Dollars, which said bond shall be payable to the Board of Insurance Commissioners, executed by the organizers as principals and one surety company, acceptable to the Board, as surety, conditioned that if the persons organizing the association shall fail to secure the requisite number of members or for any other reason shall not consummate the organization of the association within six (6) months from its date, then the advance membership dues and assessments shall be returned to the parties paying same.

(3) The constitution and by-laws under which the association will operate pending permanent organization, together with the certificate of membership which the association proposes to issue, shall be submitted to the Board for approval.

(4) The Board shall make an investigation of the individuals who shall make such application, and when the Board shall be satisfied that the organizers are responsible persons, and of the probability that territory to be served can support such association and that the articles of association, constitution, by-laws and certificates are in proper form and the bond shall have been approved, it shall issue a permit to the organizers authorizing them to solicit membership in the association and to collect the membership fee and one death assessment.

(5) When such permit to solicit membership has been issued by the Commissioners, the organizers may solicit members, and when they shall have received not less than five hundred

(500) bona fide applications for membership in the association in all classes and when they shall have collected from such members the membership fees and one advance assessment, they shall make a showing to the Board of Insurance Commissioners of Texas in such form as is required, setting forth the facts. Such membership should be completed within six (6) months from date of filing application. Thereupon the Board shall require, and the officer of the association designated to have charge of the funds of the association shall make and file a surety bond executed by a surety company authorized to do business in the State of Texas, satisfactory to the Board as surety, payable and in an amount and conditioned as required and specified in Article 14.08, Chapter 14 of this code.

Provided, however, that the provisions of this Article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One (\$1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents (\$2.50). However, such association thus exempted shall file a bond, conditioned as herein above provided, in the amount of One Thousand (\$1,000.00) Dollars with the Board of Insurance Commissioners of Texas.

(6) The Board shall then issue to such association a certificate of authority to do business in Texas, which shall expire on May 31st following, together with a certified copy of the charter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.06. Names of Association

Upon application for charter to do business in Texas the Board of Insurance Commissioners may determine whether the name of the association would be confusing and misleading to the public; if so, it may refuse the certificate or charter, and prohibit the doing of business under the name.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.07. Failure to Consummate Organization

If the organizers shall not complete the membership within the time required, the money collected shall be returned and the temporary permit issued shall be revoked.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.08. By-Laws

The constitution, by-laws and form of certificates of each association submitted to the Board and approved before writing of business is commenced, shall be effective until the first annual meeting of the association, at which time they must be confirmed by such meeting, with or without amendments as the association may decide. The constitution and by-laws of such association shall not violate any of the provisions of this law, but shall be in harmony herewith.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.09. Kinds of Benefits

Any association hereafter organized under the provisions of this chapter shall provide for the payment of death benefits only and may not provide for old age benefits and benefits in case of accidental injuries or sickness. Any association heretofore organized prior to March 21, 1929, and paying death, old age and accident benefits may continue to pay same. Anyone or all of said benefits and the benefits to be provided shall be clearly set out in the policy issued by the association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.10. May Not Issue Guaranteed Certificates

An association shall not issue certificates providing for a level premium or guaranteed benefits, nor for surrender of loan values.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.11. Revocation of Right to Do Business

The Board shall not revoke the right of any association to do business in this State except upon the judgment of a court of competent jurisdiction or upon the filing of articles of dissolution by the members of said association or the officers for them or upon a statement being filed with said Board showing that said membership had been merged and taken over by another society or association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.12. Corporate Existence

Any association organized under the provisions hereof or which has accepted the provisions hereof shall for the purposes of operation be and become a body corporate with authority to sue and be sued in its own name and to exercise the other powers and functions specifically herein granted, but not otherwise. Except as herein provided, such association shall be governed by this chapter and Chapter 14 of this code and shall be exempted from all other provisions of the insurance laws of this State. No law hereafter enacted shall apply to them unless they be expressly designated therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.13. Dissolution and Forfeitures

Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the secretary or a special meeting called for the purpose of considering dissolution; any class or group which has been in existence for six (6) months or more shall also be dissolved automatically and shall forfeit its right to do business at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, or when any class or group shall cease to operate for a period of one (1) year, and no action by any supervisory officer of the state shall be necessary to such dissolution or forfeiture. In the event of said membership becoming less than fifty (50%) per cent of the maximum amount provided in said class or group, said members by a majority vote of said officers for

them shall have the right to transfer and merge said members with any other society or association after obtaining the approval of the Board of Insurance Commissioners; provided, however, that if any such association or society shall have engaged in business continuously for a period of ten (10) years, then it shall not automatically be dissolved nor forfeit its right to do business, at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, but it shall become dissolved only in the event the membership shall fall below twenty-five (25%) per cent of the maximum value of the policy issued. Provided, further, that when membership becomes less than fifty (50%) per cent, the association will be dissolved automatically in event it fails to notify each member when assessment is made of the amount paid on the next preceding death claim.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.14. Winding Up Affairs

If any association heretofore or hereafter doing a local mutual aid business as herein defined or as defined in Article 14.37, Chapter 14 of this code shall cease to operate, or shall fall below the requirements of this Chapter or shall undertake to operate without a permit or certificate of authority, or shall fail or refuse to make reports as and when by law required, or shall refuse to submit to examination or pay the cost thereof, or shall conduct its business in a fraudulent, illegal or dishonest manner, or shall violate any of the terms of this chapter, shall, in addition to any other penalties imposed on it or on its members or officers, subject itself to forfeiture of its right to do business and to dissolution; and the Attorney General shall at the request of the Board of Insurance Commissioners file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose, the venue of all of which suits shall be laid in Travis County, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.15. Penalty

Any person or persons who shall violate any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred (\$500.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.16. Exemptions

The provisions of this chapter shall not apply to labor unions, domestic orders or associations which do not provide a death benefit of more than One Hundred and Fifty (\$150.00) Dollars, nor to the associations which are now described in Article 10.38 of this code, nor any society or association, if any, heretofore legally operating statewide on an assessment basis under any charter heretofore granted under any valid statute of this State; provided, nothing herein shall affect those associations defined

in Article 14.37, Chapter 14 of this code, organized and operating under the provisions of this chapter. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.17. Fraternal Law Not Applicable

The provisions of the Fraternal Society Law, which is Chapter 10 of this code, and Chapter 3 of this code shall not apply to associations coming within purview of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 12.18. Fees

For filing articles of association and approval of constitution, by-laws and certificates prior to organization, the Board shall charge a filing fee of Twenty (\$20.00) Dollars; for filing of each annual report it shall charge a fee of Five (\$5.00) Dollars, and it shall also charge a fee of One (\$1.00) Dollar for issuance of a certificate of authority to do business, which amount shall be paid into the general fund.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### CHAPTER THIRTEEN. STATEWIDE MUTUAL ASSESSMENT COMPANIES

#### Article

- 13.01. Corporations Included.
- 13.02. Life, Health and Accident Insurance Authorized by Mutual Assessment Life, Health and Accident Companies; Chapter 6, Title 78.
- 13.03. Branch Offices.
- 13.04. Policies.
- 13.05. Benefits; Minimum Membership Requirements.
- 13.06. Corporations Not Complying.
- 13.07. Penalty.
- 13.08. Fees.
- 13.09. Exceptions and Exemptions.

#### Art. 13.01. Corporations Included

Any corporation organized and incorporated under a preexisting law in this State without capital stock and not for profit, which law has been amended or repealed or reenacted, prior to the effective date of this code and which was operating and actually carrying on in this State immediately prior to January 1, 1933, the statewide business of mutually protecting or insuring the lives of its members by assessments made upon its members shall comply with the terms of this chapter and Chapter 14 of this code, be subject to the subsequent provisions hereof and shall be known as statewide mutual assessment corporations.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 13.02. Life, Health and Accident Insurance Authorized by Mutual Assessment Life, Health and Accident Companies; Chapter 6, Title 78

Every mutual assessment life, health and accident insurance company chartered by authority of Chapter 6, Title 78, Revised Civil Statutes of Texas, and licensed by the Insurance Department of Texas under said Act and Section 18a of Senate Bill No. 37, Acts of the First Called Session of the 41st Legisla-

ture, and which has qualified under this chapter may transact the business of life, health and accident insurance under the provisions of its charter and this chapter. Provided, further, that any such company may amend or extend its charter by compliance with the same requirements provided in the general corporation laws of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 13.03. Branch Offices

No corporation operating under this chapter shall be permitted to operate any independent branch office, separate group, club, or class, under any other name than that of said corporation, but all of its policies shall be issued in the home office of said corporation. Nothing herein shall be construed, however, as to prohibit any corporation hereunder from providing by its by-laws for the creation of separate groups, clubs, or classes, based upon such a reasonable classification as specified in the by-laws, and providing in the policies issued to the members of such groups, clubs, or classes that the benefits under said policies shall be limited to the assessments made, levied, and collected from any such particular group, club, or class, respectively. It is further provided that no stock or assets or benefits of any such particular group, club or class, shall be pledged, sold, or transferred without the consent of three-fourths ( $\frac{3}{4}$ ) of the members of such particular group, club, or class.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 13.04. Policies

No corporation hereunder shall issue any certificate or policy upon a limited payment plan, nor guarantee or promise to pay any type of endowment or annuity benefits, but shall confine its operation to the issuance of certificates looking to continuous payment of premiums or assessments during the life time of the policyholder.

Nothing in any application for the policy shall constitute a defense against any claim or loss under the policy unless a copy of said application is attached to the policy, and no misrepresentation therein shall constitute a defense unless same shall be shown to be material to the risk assumed, and any person who shall solicit an application for insurance upon the life of another shall in any controversy between the insured and his beneficiary and the company issuing any policy upon such application, be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have power to waive, change or alter any of the terms or conditions of the application or policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 13.05. Benefits; Minimum Membership Requirements

No corporation operating under this chapter shall write any policy or certificate of insurance calling for a maximum benefit in excess of Five Thousand (\$5,000.00) Dollars, nor any policy or certificate of insurance unless the membership of said corporation,

liable for assessments on said policy or certificate or group or class or club liable therefor shall be sufficient in number at the assessment rate charged said class to pay fifty (50%) per cent of the maximum benefit set forth in said policy or certificate. In the event the membership in any group, class, or club of said corporation shall fall below such number, then the corporation shall immediately notify the members of such group, class, or club, and if said membership is not increased to said number within six (6) months thereafter, said group, class, or club, shall be consolidated with some other group, class, or club, or discontinued. In the event any corporation hereunder has only one class, group, or club, then in the event the membership of said corporation shall at any time fall below fifty (50%) per cent of the number required at the assessment rate charged to pay the maximum benefit provided by any one of its policies or certificate, the corporation shall immediately notify the members of the corporation, and unless the membership is increased to said number within six (6) months thereafter, the Board of Insurance Commissioners shall take steps under Article 14.33 of Chapter 14 to bring about the liquidation of said corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 13.06. Corporations Not Complying

No person, firm, unincorporated association, or corporation shall carry on in this State the statewide business of mutually protecting or insuring the lives of its members by assessments made upon its members except under the terms of and by complying with the provisions of this chapter and Chapter 14 of this code. Each and every charter of every corporation and mutual relief or benefit association granted by the State of Texas under the authority of the Secretary of State of this State, which was or is exempt from the provisions of the insurance laws of this State by the terms of Article 2971a, R.S.1879, (Article 3096, Revised Statutes 1895) and Article 3096w, Revised Statutes, 1895, which corporations heretofore have failed or refused to comply with the terms of Chapter 8A, Title 78, Revised Civil Statutes of Texas is hereby expressly repealed and revoked and said corporations are hereafter forever prohibited from carrying on any business in this State. It is the expressed intent of this article and this chapter to revoke, repeal and cancel the charter of every corporation, dormant, or otherwise, exempt from the insurance laws of this State by Article 2971a, Revised Statutes 1879, and Article 3096 and 3096w, Revised Statutes of 1895, which failed to comply with the terms of Chapter 8A, Title 78, Revised Civil Statutes of Texas. The charters of all corporations complying with said Chapter 8A, Title 78, are expressly continued in force subject to the provisions of law. It shall be the duty of the Attorney General of this State immediately upon the effective date of this code to take necessary action by quo warranto, application for receiver, or otherwise to enforce the forfeiture of charters as provided herein and to liquidate and close the affairs of any corporation

herein referred to which has heretofore failed to comply with the terms of this chapter and Chapter 14 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 13.07. Penalty**

Any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred (\$500.00) Dollars. Any responsible officer or any corporation permitting or participating in the violation of this law by any corporation shall be deemed guilty of a violation of this chapter and subject to the penalties herein.

The Attorney General shall be authorized to enforce in addition to the rights of forfeiture provided herein the penalty provided in this article and Article 14.59 of Chapter 14 against any corporation or unincorporated association which shall be guilty of the violation of any of the provisions of this chapter and Chapter 14. The venue of any suit or prosecution under this article may be in Travis County, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 13.08. Fees**

The Board shall charge a fee of One (\$1.00) Dollar per each certificate and permit to do business issued. For filing each annual report the Board shall charge a filing fee of Ten (\$10.00) Dollars. All of said fees upon receipt shall be paid into the General Fund of the State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 13.09. Exceptions and Exemptions**

This chapter shall in no wise affect or apply to companies operating as local mutual aids, as fraternal benefit societies, reciprocal exchanges, or to foreign assessment companies operating under any other law in this State, or any other form of insurance other than those corporations carrying on in this State the statewide business of mutually protecting or insuring the lives of their members by assessments made upon their members. Except as expressly provided in this chapter and in Chapter 14 of this code, no insurance law of this State shall apply to any corporation operating under this chapter, and no law hereafter enacted shall apply to them unless they be expressly designated therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**CHAPTER FOURTEEN. GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES**

Article

- 14.01. Mutual Assessment Companies; Scope of Act.
- 14.02. Definitions.
- 14.03. Shall be Mutual in Operation.
- 14.04. By-Laws.
- 14.05. Amending By-Laws.
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- 14.07. Officers of Associations.
- 14.08. Bonds of Officers and Employees.

Article

- 14.09. Recovery on Bond.
- 14.10. Deposits.
- 14.11. Membership.
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- 14.64. Issuance of Life Insurance Policies by Local Mutual Aid Associations or Statewide Mutual Assessment Companies.

**Art. 14.01. Mutual Assessment Companies; Scope of Act**

This chapter shall apply to and embrace all insurance companies and associations, whether incorpo-

rated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefits, upon the so-called mutual assessment plan, or whose funds are derived from the assessments upon its policyholders or members, and shall, in fact apply to all life, health and accident companies or associations which do not come within the provisions of Chapters 3, 8, 10, 11, 15, 18 or 19 of this code and Chapter 5 of Title 78, Revised Civil Statutes, 1925, and amendments thereto, except that it shall not apply to associations not operated for profit composed only of the members of a particular religious denomination, and which do not provide insurance benefits in excess of One Thousand (\$1,000.00) Dollars, on any one person and which do not pay any officer a salary in excess of One Hundred (\$100.00) Dollars per month.

This chapter shall include local mutual aid associations; statewide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns by whatsoever name or class designated, whether specifically named or not.

This chapter does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; nor authorize the creation of any association or corporation to do any of the sorts of business above indicated, where such creation is not now specifically permitted by law. The laws prohibiting or limiting such creation and the exercise of corporate power are not affected by this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.02. Definitions

The following terms when used in this chapter shall be defined:

“Association” shall refer to and include all types of organizations, corporations, firms, associations, or groups subject to the provisions of this chapter.

“Board” shall refer to the Board of Insurance Commissioners of the State of Texas.

“Member” shall include policyholders or any persons insured by an association, by whatsoever means the insurance may be made effective.

“Certificate” shall include any insurance policy or contract of insurance, certificate of membership or other document through which insurance is effected or evidenced.

“Face of certificate” shall refer to the maximum amount of promised benefits, as shown on the certificate.

“Paid in full” or “full payment” shall mean the payment of the full amount of maximum benefit due on the happening of the contingency insured against.

“Insolvent” shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this chapter.

“Assessment” shall include premiums and mean any and all money or valuable thing paid in consideration of such insurance as is afforded by the certificate.

“Membership fee” shall be the amount of the first assessment or assessments permitted by the Board to be placed in the expense fund of associations, representing cost of soliciting or procuring the member.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.03. Shall be Mutual in Operation

All associations operating under this chapter shall be mutual in character, but no liability shall rest upon any officer, director or member in an individual capacity by virtue of any policy issued or claims arising thereon.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.04. By-Laws

Each corporation shall submit to the Board of Insurance Commissioners a copy of its by-laws. Such by-laws shall contain all things required by this chapter and shall not contain any provision in conflict with this chapter. The by-laws shall provide for the periodical meetings of the membership and for special meetings, at which meetings all members shall be permitted to vote. The Board of Insurance Commissioners shall examine such by-laws, and if the same comply with the provisions of this chapter shall signify their approval of same. If they shall not be in accordance with the provisions hereof, then the corporation shall make said by-laws conform hereto. Upon approval of the by-laws a copy duly certified to by the president or general manager and the secretary of the corporation shall be filed with the Board of Insurance Commissioners, and a copy duly certified by such Board shall be received in evidence in all the courts of this State. All policies issued by a corporation under this chapter shall provide that said policy is subject to the by-laws of the corporation and all future amendments thereto. All amendments shall be filed with the Board of Insurance Commissioners in a like manner as the original by-laws. A certified copy of any changes in the by-laws of each such corporation shall be mailed to each of the stockholders and/or members at the next assessment after such change in the by-laws is made.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.05. Amending By-Laws

By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed

changes in the by-laws and fair explanations of the intent and effect thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.06. Refusal of Certificate or Permit

No such corporation shall continue to operate in this State if the Board has notified it in writing of the refusal of the Board to issue it a certificate and permit. But any such corporation may within sixty (60) days after receiving such notice file a suit in any district court of Travis County, Texas, to review the said action of the Board and may by trial de novo have all necessary relief both in law and equity to enforce its rights under this chapter.

Nothing in this chapter shall be construed to validate or otherwise sanction any unlawful act of any such corporation, except when such unlawful act may have been construed to be unlawful simply by reason of the fact that the law under which said corporation was created has since been repealed or amended so as to omit therefrom such corporations as are described in this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.07. Officers of Associations

The Board of Insurance Commissioners shall not issue to any association a certificate of authority to do business in Texas, when it shall find any officer, employee, or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order the removal of any officer, employee, or director found unworthy of the trust, and if such officer, employee, or director be not removed, the Board shall cancel the certificate and proceed to deal with the association as though it were insolvent.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.08. Bonds of Officers and Employees

Such association shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the Board of Insurance Commissioners, designating therein some officer who shall be responsible in the handling of the funds of the corporation. Such association shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this State, as surety, satisfactory and payable to the Board of Insurance Commissioners of Texas in the sum of not less than Two Thousand Five Hundred (\$2,500.00) Dollars for the use and benefit of said association, and which shall at all times be equal to the amount of the mortuary fund on hand, not to exceed Twenty Thousand (\$20,000.00) Dollars, which said bond shall obligate the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others, while employed as such officer or exercising powers

of such office. In lieu of such bond any such officer may deposit with the Board of Insurance Commissioners cash (or securities approved by the Board) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. Provided, however, that the provisions of this article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One (\$1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents (\$2.50). However, such association thus exempted shall file a bond, conditioned as hereinabove provided in the amount of One Thousand (\$1,000.00) Dollars with the Board of Insurance Commissioners.

In addition to the bond required in the preceding paragraph, and in addition to the bond already required by law of certain associations subject to this chapter, each association shall procure for all other office employees, or other persons who may have access to any of its claim funds, separate bonds or blanket bonds with some surety licensed by the Board to do business in Texas, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of the association obligating the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided for in this article may be had on such bonds until same are exhausted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.09. Recovery on Bond

When the Board is informed that any officer of any such association has violated the terms of either of said bonds it shall demand a written explanation of such officer as to such charge, and if after such explanation the Board is not satisfied as to the existing facts in controversy it shall notify such officer to be and appear in Travis County with such records, writings, and other correspondence and facts as the Board deems proper, not earlier than ten (10) days or later than fifteen (15) days from service of notice, and it shall there conduct an examination into such affair, and if upon such examination the Board shall become satisfied that the terms of said bond have been violated by said officer the Board shall immediately notify the company executing said bond and prepare a written statement covering said facts and deliver same to the Attorney General of Texas, whose duty it shall be to investigate said charges and if satisfied that the terms of said bond have been violated he shall enforce the liability against said cash or securities, or he shall file suit on

said bond in the name of the Board of Insurance Commissioners of Texas for the benefit of the beneficiaries thereof against said officer as principal and the sureties of his bond for the recovery of said amounts due by said officer, and all costs of suit in some court of competent jurisdiction, in Travis County, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.10. Deposits

Each association shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest risk assumed on any one life or person, which may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all final judgments against the association, and subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.11. Membership

Membership in the association shall be confined to persons qualified under the provisions of the by-laws. Such membership shall equal the qualifying membership at all times and failure to maintain such, the association shall be considered insolvent and dealt with as hereinafter provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.12. Books and Records

All the records and books of each association shall be kept in the shape, form and manner acceptable to the Board, and if such records and books of any association are kept in such manner as not to reflect truly and accurately the condition of the association, or the facts essential to its faithful and effective operation, the association shall at once adopt forms or systems acceptable to the Board which will serve the purpose most effectively.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.13. Records; Merging of Membership

Each association shall keep a complete and correct roster of its members with proper statistical records for the purpose of determining proper cost of insurance, by ages or otherwise, and shall keep accurate records of groups, classes or clubs or other division of memberships, if any; and shall keep records to show amounts paid in on assessments by each member and each group; and as to groups, must show

how the funds are distributed between expense and mortuary or relief funds, and showing the amounts paid out of the funds of the whole membership or each group in death claims or other benefits.

The associations subject to this chapter are hereby expressly prohibited from merging with another association, are prohibited from "transferring" any part or group of membership, or all the membership to another association or from merging groups or transferring members from one group to another in an association without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such transfer or merger is to the advantage of members of the association or groups to be affected.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.14. Amendment of Charter

Any amendment to the charter of an association operating under this chapter changing the name of the association, must be submitted to the Board of Insurance Commissioners for approval; and the charter of any association operating under this chapter may not be amended to provide for changing its name to a name that is determined by the Board of Insurance Commissioners to be confusing and misleading to the public.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.14a. Validation of Existing Charters; Right to Amend to Extend Corporate Existence

This Article shall apply to every company or association regulated by the provisions of Chapter 14 of the Insurance Code of Texas on the effective date hereof. The charters of all such companies which are actively conducting an insurance business under Chapter 14 of the Insurance Code of Texas on the effective date hereof and which have been issued a permanent certificate of authority from the State Board of Insurance pursuant to Article 1.14 of the Insurance Code of Texas, authorizing such companies to transact an insurance business, are hereby in all things validated. Any such company or association shall have the right to amend its charter for the purpose of extending its period of duration, which may be perpetual, by filing an amendment for such purpose within six (6) months after the effective date of this Article in the same manner as would be done with any other amendment to its charter under existing laws. This Article shall not apply to any company or association which failed to comply with the provisions of Article 13.06 of the Insurance Code of Texas, nor to any company or association which has heretofore voluntarily surrendered its charter, nor to any company or association which has had its charter forfeited or cancelled by a Court of competent jurisdiction, nor to any company or association which has surrendered its certificate of authority and charter to the State Board of Insurance and has had a cessation of corporate existence under the

provisions of Chapter 22 of the Insurance Code of the State of Texas.

[Acts 1963, 58th Leg., p. 330, ch. 125, § 1.]

Acts 1963, 58th Leg., p. 330, ch. 125, § 2, provided: "Sec. 2. Precedence of Act in Cases of Conflict. The rights, power, authority, and procedures granted in the foregoing Section of this Act shall be deemed to be in addition to all other rights, authorities and procedures now existing and conferred by the laws of the State of Texas, and any pre-existing Act which tends to hamper or limit the rights, authorities and procedures granted in this Act shall be deemed to be superseded by the provisions hereof and, to the extent that any other law is in conflict with, or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective."

#### Art. 14.15. Annual Statement; Certificate of Authority; Reserves; Permissive Deficiency Reserve

##### Annual Statement; Certificate of Authority

Sec. 1. On or before the 1st day of April of each year, each association or company operating under the provisions of this Chapter shall file with the State Board of Insurance a complete and full sworn statement of its condition on the 31st day of December next preceding. Such statement shall exhibit all real and contingent assets, and all liabilities and an account of income and disbursements to and from the mortuary and expense funds during the year, and on forms which the State Board of Insurance shall furnish for the making of such annual statements. Upon examination of said annual statement, the State Board of Insurance shall, if such report shows that the company or association is in all things complying with the requirements of law, issue such company or association a certificate of authority to transact its business in this State for the year next succeeding the filing of said report, or continue its certificate of authority in force as is provided in Article 1.14 of this Insurance Code.

##### Method of Calculating Reserves

Sec. 2. In the manner as in this Article is hereinafter provided, each company or association regulated by the provisions of this Chapter, except assessment-as-needed associations or companies, shall in each year, commencing as of December 31, 1965, compute or cause to be computed its reserve liability on all outstanding and in force policies of insurance. In making such computation each company or association is authorized to use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by such company or association and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 14. Such reserves shall be calculated and determined as follows:

(a) (1) Each individual life policy insuring one or more persons at individual premiums for each such person shall be reserved and each company or association regulated by the provisions of this Chapter shall maintain reserves on

such individual life policies in accordance with any reserve standards adopted by such company or association and approved by the State Board of Insurance, provided such reserves are at least equal in the aggregate to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3½%) per annum. Any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3½%) per annum.

(2) Family group life policies upon which a group premium is charged, and which premium is not reduced upon the death of any insured, shall be reserved and each company or association shall maintain reserves on such family group policies in any one of the following methods of calculation as may be selected by such company or association:

(i) The reserves shall be equal to the reserves which would be required in accordance with the provisions of this Article on individual life policies on the lives of the then living two oldest members of each such family group; the amount of insurance for such two members shall be based on the assumption that the elder of such two members will be the first to die; or

(ii) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Article, on individual life policies, on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die; or

(iii) Any table or any method of calculating reserves as shall be approved in advance by the State Board of Insurance.

(3) As is applicable to all life policies (individual and family group) in force on December 31, 1965, or upon which a rate increase is effected after December 31, 1965, life reserves (individual and family group) may be determined as follows:

(i) the issue year shall be the last calendar year for which the gross premium on the reserve table and interest rate adopted by the company or association at the attained age in that calendar year is equal to or less than the premium rate charged by the company or association on such policy so reserved, and

(ii) the issue age shall be the attained age in the calendar year just defined.

Gross premium as herein used shall mean the renewal net premium plus such expense loading as shall be designated by the company or association or as shall otherwise be regulated by the provisions of this Chapter 14.

(b) All health, accident, hospitalization and sickness insurance shall be reserved by the company or association and such company or association shall maintain reserves on such insurance in the same manner as is required by a company writing such coverage under the provisions of Chapter 22 of this Insurance Code, as amended.

#### Reserve Liability, Computation

Sec. 3. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each company or association regulated by the provisions of this Chapter 14. In making such computation the said Board may use group methods and approximate averages for fractions of a year or otherwise.

#### Permissive Deficiency Reserve, Reduction of Permissive Deficiency Reserve

Sec. 4. (a) As of December 31, 1965, each such company or association regulated by the provisions of this Chapter shall so calculate the amount of the required reserves as aforeprovided in this Article, and shall also determine the amount of the net assets (net assets being the gross amount of such mortuary fund assets at such date, but less any liabilities of said fund, exclusive of reserves) of its mortuary or claim fund, or by whatever name said fund may be designated. In the event the net assets of the mortuary fund are insufficient to equal the amount of the required reserves as in this Article provided, the difference shall be designated and carried as a permissive deficiency reserve.

(b) In the event any company or association shall, as of December 31, 1965, possess a permissive deficiency reserve, it shall not later than July 1, 1966: (1) file an application with the State Board of Insurance seeking approval of a rate increase whereby such rate increase shall be accomplished by charging a premium based upon the advancement of ages of such insureds, from age at issue date, or such ages so previously advanced, in order to totally eliminate such permissive deficiency reserve or to partially eliminate such permissive deficiency reserve in connection with a plan to cure such permissive deficiency reserve; or (2) file an application with the State Board of Insurance for approval of a plan whereby such permissive deficiency reserve will be eliminated over a period of time not to exceed eighteen (18) years. Such plan shall reasonably demonstrate the anticipated ability of the company or association to correct such permissive deficiency reserve during such period of time. Such plan may include any reasonable method, procedure or financial arrangement in order to accomplish the required reduction of the permissive deficiency reserve over such period of eighteen (18) years. Provided said plan is found to reasonably demonstrate the ability of the company or association during such period of time to eliminate such permissive deficiency reserve, then such permissive deficiency reserve shall be allowed without creating the insolvency of the company or

association, but the company or association shall reduce said permissive deficiency reserve so determined by at least  $\frac{1}{8}$ th thereof during each calendar year thereafter, commencing as of December 31, 1966, so that as of December 31, 1983, the permissive deficiency reserve will be fully paid and satisfied, provided, however, that such required reduction in the permissive deficiency reserve shall never exceed the cumulative aggregate amount of  $\frac{1}{8}$ th per annum.

In the event that such plan be not finally approved, such company or association shall increase rates as provided in Section 4, Paragraph (b)(1) of this Article.

(c) Each company or association may, in addition to, or in combination with, or in lieu of, such rate adjustment or readjustments of rates as in this Chapter provided, offer each insured a proportionate reduction in the amount of insurance, or some lesser reduction, provided such plan is agreed to by the individual insured or the controller of said policy.

(d) Any decision made by the State Board of Insurance as to approval or disapproval of the plan for curing such permissive deficiency reserve shall be subject to judicial review in accordance with Article 21.44 of Sub-Chapter F of Chapter 21 of this Insurance Code.

#### Net Premiums to be Charged

Sec. 5. (a) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve equal to or in excess of 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that at least the renewal net premium based upon:

(1) the table of rates and reserves adopted by the company or association; and

(2) the age of each insured at date from which reserves are calculated, is being deposited to the company's or association's mortuary or claim fund upon each in force life policy or life policy in combination with other type benefits. In the event such company or association cannot so furnish such affidavit, said company or association shall:

(1) forthwith alter the division of premiums between the mortuary and expense funds so that such renewal net premium so calculated at age from which reserves are calculated on each such policy is placed in the company's or association's mortuary fund; or

(2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premi-

um so determined under such table at age from which reserves are calculated.

(b) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve of less than 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that in the aggregate premiums deposited to the mortuary or claim fund equal or exceed at least the aggregate amount of the renewal net premiums on all policies in force on December 31, 1965, based upon

(1) the table of rates and reserves adopted by the company or association, and

(2) the age of each insured at date from which reserves are calculated. In the event such company or association cannot so furnish such affidavit, said company or association shall:

(1) forthwith:

(i) alter the division of premiums between the mortuary and expense funds so that such renewal net premium in the aggregate on all policies in force on December 31, 1965, so calculated at age from which reserves are determined on each policy in force is placed in the company's or association's mortuary fund, and

(ii) provide in its bylaws that annually thereafter in each calendar year an amount, from the premiums collected, in the aggregate equal to the renewal net premium on all policies in force on December 31st of each such year will be deposited to the company's or association's mortuary fund; or

(2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so determined under such table at age from which reserves are calculated.

#### Adjustment of Premiums to Reduce Permissive Deficiency Reserve

Sec. 6. In the event any annual required reduction of the permissive deficiency reserve is not accomplished as of December 31st of each year involved, the Board of Directors of the company or association shall by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment, so as to correct the failure to make the required reduction of the permissive deficiency reserve. In the event of the failure of the Board of Directors of the company or association to so act within thirty (30) days following such calculation of its reserves, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent. In like manner

if it shall be apparent at any time during any calendar year that the annual required reduction of the permissive deficiency reserve cannot be accomplished as of December 31st of each or any year, the Board of Directors of the company or association may by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct the failure to accomplish such annual required reduction of the permissive deficiency reserve on all or any part of the permissive deficiency reserve. Any such rate adjustment or readjustment shall be deemed and considered as assessments upon said policies.

#### Rate Adjustment Required to Maintain Reserves

Sec. 7. In the event any company or association at any future time does not possess in its mortuary fund the required reserves, less any permissive deficiency reserve, the Board of Directors of the company or association shall by appropriate action increase rates on policies in force by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct such reserve inadequacy. Such rate adjustment may be made at any time, and from time to time, provided it shall be apparent that such reserve inadequacy will exist as of December 31st of the year in which such rate adjustment is made, and any such rate adjustment or readjustment so made shall be deemed and considered as an assessment upon said policies. In the event of the failure of the Board of Directors of the company or association to so act in adjusting rates within thirty (30) days following the calculation of reserves as of the dates in this Chapter provided, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent.

#### Dividends

Sec. 8. In the event that the amount of the mortuary or claim fund of the company or association shall exceed the amount of the required reserves to be maintained, such company or association may pay dividends from said fund to its policyholders provided:

(a) no permissive deficiency reserve exists at date of payment; and

(b) the amount of the dividend and method of distribution thereof is equitable and nondiscriminating and approved in advance of payment by the State Board of Insurance.

#### State Board of Insurance Approval

Sec. 9. Whenever rates shall be increased subsequent to date of issue of a policy, such increase shall not be placed in effect until first approved by the State Board of Insurance as provided in Article 14.23 of this Chapter 14.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 457, ch. 234, § 1, eff. May 21, 1965.]

**Art. 14.16. Examination**

In addition to the annual report required by this chapter, the Chairman of the Board of Insurance Commissioners shall, once in every two (2) years or oftener if he deems it advisable, require the books, records, accounts, and affairs of any corporation or association qualifying and acting under this chapter to be examined and audited by an accountant or accountants or examiner designated and commissioned by him. For the purpose of any examination, the Chairman of the Board and the auditors and examiners shall have free access to all books, records, papers, and accounts of the corporation; and the cost for the time required in making such examination and audit and all necessary expenses in connection therewith shall be paid by the corporation upon presentation of a bill showing the charges made by the Department, which shall include the salaries, traveling expenses, hotel bills, and other expenses of such auditors and/or examiners, together with all other expenses in connection with such examination. Each corporation or association shall be charged with the salary of the auditors and examiners for the time required in making such examination and the time required in connection with going to and coming from the place or places necessary in connection with such examination, together with all expenses incurred by such auditors and/or examiners, and in addition thereto such corporation or association shall be charged by the Board with an amount equal to the salaries of the actuary, examination clerk or clerks, stenographers, and all other employees employed in connection with the examination work in the Department for the time said employees are performing duties in connection with the examination of each corporation so examined.

The amounts so collected shall be paid into the Examination Fund of the State Treasury Department and paid out in accordance with the general examination laws.

The Chairman of the Board of Insurance Commissioners or his deputy or any examiner shall have the right to require any officer, agent, or employee of any company or association operating under this law, or any other person, to be sworn and to answer under oath any questions regarding the affairs or activities of said association or company, and said Chairman of the Board, his deputy, and/or any examiner or auditor is hereby authorized to administer such oath.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.17. Certificate of Authority Required; Exemptions**

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to

carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed Three Hundred Dollars (\$300) per month; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 661, ch. 304, § 1; Acts 1959, 56th Leg., p. 1085, ch. 496, § 1.]

*Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.*

**Art. 14.18. Policies or Certificates**

Every policy or certificate of insurance issued by an association shall state definitely on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid shall be plainly stated in the policy. Every health, accident or other benefit shall be plainly stated in the policy, and the terms and conditions under which they shall be paid shall be stated plainly in the policy.

An application for each certificate must be signed by the applicant, unless the applicant is a minor, in

which event the application may be signed by a parent or guardian; and a copy thereof must be attached to and made part of such certificate. If the certificate is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten point type in language acceptable to the Board. All statements in the application shall in the absence of fraud be regarded as representations and not warranties.

All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. Each certificate must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two years from date of issue, except for non-payment of dues or assessments. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

It shall be unlawful for any association to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand (\$5,000.00) Dollars.

Every certificate issued must be approved by the Board as to form and language before it is used by an association. It is not mandatory that these forms be uniform for all associations, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several associations. All certificate forms hereafter used must be in accord with the provisions of this chapter and with all other laws regulating such associations as are embraced in this chapter. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.19. Renewals of Certificates

In case a certificate shall terminate for any reason, and in case it shall be a rule of the association that all reinstated certificates shall be regarded as new certificates, then the application for reinstatement shall carry the statement in at least ten point type that the same rules apply to it as to the original certificate, and that it can be invalidated within the contestable period for false statements respecting the health or physical condition of the applicant, or other matters material to the risk. A true and correct copy of the application for reinstatement shall be mailed by first-class mail to the certificate holder upon the reinstatement of the certificate. In

case of controversy the burden of proof shall be on the association to prove the copy of reinstatement application was mailed to the member. In the event a renewal certificate is issued, such renewal certificate shall have a copy of the application for reinstatement attached and made a part thereof.

It is specifically provided, however, that in case an association shall renew or reinstate a certificate after termination, the payments by the reinstated member shall be divided between the funds in the same percentage as is required of regular payments in the particular by-laws, unless nine (9) months have elapsed between termination and reinstatement. If nine (9) months have elapsed between termination and reinstatement, a reinstatement fee not in excess of the membership fee may be charged and placed in the expense fund. Furthermore, in case of renewal or reinstatement, the renewal or reinstatement certificate shall not be contestable for any cause except nonpayment of assessments for longer than six (6) months from date thereof, unless the reinstatement or renewal is within the original two (2) year contestable period, in which case the same may be extended for six (6) months from the date on which it would have originally expired. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.20. Reduced Benefits or Excluded Coverage on Life Policies; Health and Accident Policies Excluded

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the Board of Insurance Commissioners issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death of<sup>1</sup> injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this section shall apply to all outstanding policies already containing such limitations.

Sec. 2. The provisions of Section 1 of this article shall not apply to health and accident policies. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

<sup>1</sup> Probably should read "or".

#### Art. 14.21. Policies May be Issued at Stipulated Rate; May Provide for Deduction of Unpaid Balance of Annual Premium from Benefits

Any insurance company or association licensed by the Board of Insurance Commissioners to operate

under this chapter may issue policies on the stipulated or specified premium plan which allows the insured the privilege of paying regular premiums weekly, monthly, quarterly, semi-annually, or annually, as he may choose from time to time. Such policies may also provide that upon the maturity of benefits payable under the policy or certificate any balance of premium for the current policy year remaining unpaid shall be deducted from the benefits payable. The provisions of this article shall apply to all outstanding policies already containing such a provision.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 14.22. Certificates Subject to Constitution, By-Laws**

Certificates issued by an association shall state that said certificate is issued subject to all the terms of the constitution and by-laws of the association then in force and as the same might thereafter be amended and that said certificate shall be governed by such by-laws and constitutional provisions that the Board of Insurance Commissioners shall theretofore and thereafter approve.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 14.23. Assessments and Premiums; Adjustment of Rates; Penalty For Failure to Comply; Authority of State Board of Insurance**

##### **Assessments and Premiums**

Sec. 1. (a) Each company or association shall levy regular and periodical assessments by whatever name they may be called. These assessments must be in such amounts and at such proper intervals as will meet the reasonable operating expenses of the company or association and pay in full the claims arising under its certificates.

(b) All premiums or assessments upon policies hereafter issued insuring the life of one or more persons shall be in accordance with the reserve table standards adopted by the company or association and approved by the State Board of Insurance, except that any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed 3½% per annum, and shall be in an amount so as to deposit in the mortuary or claim fund an amount at least equal to the renewal net premiums calculated in accordance with the reserve standard adopted by such company or association and approved by the State Board of Insurance.

##### **Rate Adjustments**

Sec. 2. When, or if, in the course of operation the amount of the mortuary fund of the company or association is not equal to or in excess of the required reserves under the reserve standard adopted by the company or association and approved by the State Board of Insurance on such policies, but less

any permissive deficiency reserve, the amount of the premiums shall be increased in the manner as prescribed in this Chapter 14 until such rates are adequate to eliminate the inadequacy of the required reserve, less any permissive deficiency reserve, and the State Board of Insurance shall so order.

##### **Penalty**

Sec. 3. When any company or association shall refuse to comply with the order of the State Board of Insurance respecting rates or assessments as in this Chapter authorized, it shall be treated as insolvent.

##### **Authority of the Board of Directors**

Sec. 4. The Board of Directors of each company or association by resolution may increase rates on life policies in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at 3½% per annum, or any other reasonable, equitable or necessary increase, and may likewise adjust rates on health, accident, sickness and hospitalization policies in force. Any increase rate or rate adjustment on policies in force shall apply to all classes of the same or similar policies.

##### **State Board of Insurance Approval**

Sec. 5. Any increase in rates on policies in force shall not be placed in effect without the advance approval of the State Board of Insurance approving the same as being in compliance with the provisions of this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1961, 57th Leg., p. 234, ch. 121, § 1; Acts 1965, 59th Leg., p. 457, ch. 234, § 2, eff. May 21, 1965.]

#### **Art. 14.24. Revenues from Fees and Assessments**

The funds of the association shall be derived from membership fees and assessments. Assessments shall be made upon the membership to meet benefit claims and for surplus funds and for expenses. Calls for assessments must specify the purpose for which made. Before suspending any member from membership it shall be necessary for the association to mail a notice, by first-class mail, to the member, which notice shall state the final date of payment. All funds collected that belong to the association shall be deposited within five (5) days in a state or national bank.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### **Art. 14.25. Division of Funds; Bylaw Provisions; Investment of Funds**

##### **Division of Funds**

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

(a) Assessments or premiums upon (i) policies issued after December 31, 1965, insuring the life of one or more persons, and (ii) policies insuring the life of one or more persons issued prior to December 31, 1965, and upon which the rate has been increased based upon an age other than age at date of issue, when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different companies or associations, and from which fund claims under certificates shall be paid, and nothing else, except:

(1) dividends to policyholders when paid in accordance with this Chapter,

(2) income taxes, if any, which may be due by reason of the income to or operation of said fund, and

(3) other expenditures permitted by law; and the other fund shall be the expense fund from which expenses may be paid. As applies to all such policies, as defined in (i) and (ii) of this subparagraph and insuring the life of one or more persons, an amount at least equal to the renewal net premium, calculated at the age of issue or some other advanced age in accordance with the reserve standard adopted by such company or association, shall be placed in the mortuary fund. All other portions of the premiums may be placed in the expense fund. Whenever any life premium rate is increased in accordance with the provisions of this Chapter at any age other than at age of issue, the expense loading on the new premiums shall not, upon all ages fifty and above, exceed twenty-five per cent (25%) of such gross premium charged, unless an additional expense loading is approved by the State Board of Insurance as being reasonable and necessary.

(b) Premiums or assessments upon all policies in force on December 31, 1965, except as in Subparagraph (a) of this Section 1 provided, and upon all health, accident, sickness and hospitalization policies shall be divided so that at least sixty per cent (60%) of such premium, exclusive of the membership fee, shall be placed in the mortuary fund of the company or association. The membership fee and the remaining portion of the premium may be placed in the expense fund. As to policies in force on December 31, 1965, insuring the life of one or more persons and upon which a rate increase has not been accomplished, any company or association may at its election divide the premiums on such life policies so as to place at least the net renewal premium, based upon the reserve table adopted by it, in its mortuary fund and place the remaining portion of said premium in its expense fund.

#### Assessment-as-Needed, Division of Funds

Sec. 2. The provision of this Section 2 shall apply to all companies or associations operating upon an assessment-as-needed basis.

(a) Assessments when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different associations; and the other fund shall be the expense fund. At least sixty per cent (60%) of assessments collected except the membership fee, must be placed in the mortuary or relief fund.

#### Bylaw Provision

Sec. 3. Each company or association shall provide in its bylaws for the method and procedure for the allocation of premiums to be made between the mortuary and expense funds.

#### Investment of Funds

Sec. 4. The mortuary fund may be invested only in such securities and investments as are a legal investment for the reserve funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended, and the expense fund may be invested in any securities and investments as are legal investments for the surplus funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended.

#### Use of Funds

Sec. 5. Each company or association mortuary fund and expense fund shall be expended only in the manner as is provided for each fund in Subparagraph (a) of Section 1 of Article 14.25 of this Chapter of this Insurance Code and invested only as provided in Section 4 of Article 14.25 of this Chapter of this Insurance Code.

#### Cost of Defending Contested Claims

Sec. 6. The reasonable costs of defending contested claims on health, accident, sickness or hospitalization policies only may be paid from the mortuary or claim fund of any company or association authorized to write health, accident, sickness or hospitalization insurance, provided:

(a) each such expenditure for that purpose is approved by the State Board of Insurance, and

(b) such company or association possess the required reserves as provided in this Chapter 14 but less any permissive deficiency reserve.

#### Limitation Upon Rate Increases on Certain Life Policies

Sec. 7. Any other provision of this Chapter 14 of this Insurance Code, as amended, notwithstanding, rates on life policies issued after the effective date of this Act may not be increased during any consecutive five-year period more than double the rate than charged such insured at the time of such rate increase.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 457, ch. 234, § 3, eff. May 21, 1965.]

**Art. 14.26. Investments**

Any surplus funds on hand belonging to any such association must be invested, if at all, in such securities as the funds of stock life, health and accident insurance companies may be invested in. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.27. Groups or Class of Members**

The constitution and by-laws of each association shall state the number of members to be admitted in a class or group of the association. Accounts of the mortuary assessments of the several classes shall be kept separately; and the funds of one group or class shall not be used to pay claims for any other classes.

In the creation of a new group, club, or class, an association may have six (6) months from the date of its creation within which to build said group, club, or class up to the required membership to pay claims in full, provided in the interim the certificates provide for no more than a Five Hundred (\$500.00) Dollar benefit, unless the association has funds out of which it may lawfully make and actually does make the full payment of benefits in the interim. Creation of any new group shall be subject to advance approval by the Board of Insurance Commissioners. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.28. Beneficiaries**

The payment of death benefits shall be confined to the wife or husband of a member, or relatives by blood to the fourth degrees, or by marriage to the third degree, or to persons actually dependent upon the member, and creditor, estate or any one having an insurable interest or any purely charitable or religious institution.

The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case the nearest relative of the insured shall receive said insurance. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.29. Payment of Claims**

It is the primary purpose of this chapter to secure to the members of the associations and their beneficiaries the full and prompt payment of all claims according to the maximum benefit provided in their certificates. It is therefore required of all associations that all claims under certificates be paid in full within sixty (60) days after receipt of due proof of claims.

Written notice of claim given to the association shall be deemed due proof in the event the association fails upon receipt of notice to furnish the claimant, within fifteen (15) days, such forms as are usually furnished by it for filing claims.

Any association which shall become unable to pay its valid claims in full within sixty (60) days after due proofs are received, shall for the purpose of this

chapter be regarded as insolvent, and dealt with as is more fully provided hereinafter. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.30. Contests**

It shall not be unlawful for an association to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the association is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board shall cancel the certificate of authority of any association found to be operating fraudulently or improperly contesting its claims.

Reports regarding the costs of contests must be made under oath of an officer of the association, with the annual report of all associations to the Board. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.31. Assessment-as-Needed Groups**

The provisions of this chapter requiring the full payment of claims shall not apply to any groups, club, or class previously organized and now operating on the post-mortem or assessment-as-needed plan and any association having such a group, club, or class may continue to operate it on said plan so long as any such group, club, or class has a sufficient membership at the assessment rate charged to produce, and so long as it does produce, for the mortuary or relief fund at least fifty (50%) per cent of the maximum value of the largest policy in said group, club, or class. In the event the membership of any group, club, or class is only sufficient in number to pay between fifty (50%) per cent and one hundred (100%) per cent of the maximum value, it shall be the duty of the officer of said association to have printed on each assessment notice the percentage of the maximum value of the certificate actually paid on the last death claim in said group, club, or class. Provided further, that no association and no group, club, or class in any association shall hereafter be organized to operate on the post-mortem or assessment-as-needed plan.

If on any assessment the amount realized is not sufficient to pay fifty (50%) per cent of the face of the certificate, the association shall be deemed insolvent and dealt with as hereinafter provided.

The benefits to be paid by such association shall be dependent upon the amount realized from assessments upon the membership, and the certificates issued shall so provide; and the certificates shall also state the maximum to be paid. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.32. Payments on Certificates Already in Force**

If the payments of the members of any association coming within the scope of this chapter on certificates issued and in force when this code takes effect, or the reinsurance or renewals of such certificates, shall prove insufficient to pay matured death and disability claims in the maximum amount stated in such policies or certificates, and to provide for the creation and maintenance of the funds required by its by-laws, such association may with the approval of the Board of Insurance Commissioners and after proper hearing before said Board provide for meeting such deficiency by additional, increased, or extra rates of payment. The members may be given the option of agreeing to reduced maximum benefits, or of making increased payments.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.33. Insolvency; Conservatorship; Receiver**

If, upon an examination or at any other time, it appears to the Commissioner that such association be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such association appears to have exceeded its powers or failed to comply with the law, or has a membership of less than five hundred (500) paying their assessments, then the Commissioner shall notify the association of his determination and said association shall have thirty (30) days under the supervision of the Commissioner within which to comply with the requirements of the Commissioner; and in the event of its failure to comply within such time, the Commissioner, acting for himself, or through a conservator appointed by the Commissioner for that purpose, shall immediately take charge of such association, and all of the property and effects thereof.

If the Commissioner is satisfied that such association can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner, pending the election of new directors and officers by the membership in such manner as the Commissioner may determine, the same shall be done, and the conservator may, with the approval of the Commissioner, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company or association authorized to transact business in this State. The conservator may transfer to the reinsurance company such mortuary funds or other assets or portions thereof as may be required to reinsure such policies or certificates. If the Commissioner, however, is satisfied that such association is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Commissioner shall proceed to reinsure the outstanding policies in some solvent association or company, authorized to transact business in this State, or the Commissioner shall proceed through such conserva-

tor to liquidate such association, or the Commissioner may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such corporation or to require it to comply with the law or to satisfy the Commissioner as to its solvency. The court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the corporation, under usages and practices of equity; and may make disposition of the business and membership of the corporation as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such corporation, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such corporation be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner to determine whether or not he will operate the association through a conservator, as provided above, or proceed to liquidate the association, or report it to the Attorney General, as herein provided.

When the policies of an association are reinsured or liquidated, as herein provided, the Commissioner shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the association so reinsured or liquidated. Where the Commissioner lends his approval to the merger, transfer, or consolidation of the membership of one association with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the association from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of associations reinsured or liquidated. No merger or transfer shall be approved unless the association assuming the members transferred or merged is operating under the supervision of the Commissioner of Insurance. The cost incident to the conservator's services shall be fixed and determined by the Commissioner and shall be a charge against the assets and funds of the association to be allowed and paid as the Commissioner may determine.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1965, 59th Leg., p. 1638, ch. 705, § 1, eff. Aug. 30, 1965.]

**Art. 14.34. Service of Process**

In any lawsuit brought against an association operating under this chapter, service of citation shall be had upon the president, any acting vice-president, secretary, or general manager of said association or upon the Chairman of the Board of Insurance Commissioners, which service upon the Chairman shall be within the time required for service upon individuals. The Board when served with citation for such association shall forthwith transmit the same by registered mail to the association at the post office

address as designated in records on file with the Board of Insurance Commissioners.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.35. Venue

In all actions brought against corporations operating under and subject to this chapter growing out of or based upon any right of claim or loss or proceeds due, arising from or predicated upon any claim for benefits under any policy or contract of insurance issued by such corporation, venue shall lie in the county where the policyholder or beneficiary instituting such suit resides or in the county of the principal office of such corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.36. Special Disability Provision

If any of the provisions of this chapter may appear obscure when applied to health, accident or disability provisions in certificates issued by associations authorized to issue health, accident or disability certificates, then the Board is directed to interpret same in accord with the expressed purpose and spirit of this chapter looking to the full payment of claims, and at the same time preserving to members the benefit of the protection afforded by such association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.37. Burial Association

Any individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits, which under any circumstances may be payable partly or wholly in merchandise or services, not in excess of One Hundred and Fifty (\$150.00) Dollars, or the value thereof, are hereby declared to be burial companies, associations or societies, and shall organize under provisions of Chapter 12, and shall operate under and be governed by Chapter 12 and this chapter. It shall be unlawful for any individual, individuals, firms, co-partnerships, corporations, or associations, other than those defined above, to engage in the business of providing burial or funeral benefits, which under any circumstances may be paid wholly or partly in merchandise or services.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.37-1. Insurance Policies Payable in Merchandise or Burial Materials and Services; Penalty

Sec. 1. It shall hereafter be unlawful for any person, corporation, insurance company, fraternal organization, burial association or other association to write, sell or issue any certificate, policy, contract or membership, maturing upon the death of the person holding the same or upon the death of some member of the holder's family, if such certificate, policy, contract or membership provides that it is to be paid or settled, or if the plan of such person, corporation, organization or association provides that its certificates, policies, contracts or memberships

are to be paid or settled, in merchandise or services rendered, or agreed to be rendered, or by furnishing burial materials or burial services, or in discounts on the regular prices of merchandise, burial materials or funeral services or other services; or if such certificate, policy, contract or membership is to be paid at maturity in anything except money.

Sec. 2. Any person, corporation, insurance company, fraternal organization, burial association or other association which shall hereafter write, sell or issue any certificate, policy, contract, or membership prohibited by the foregoing section of this Act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than Ten Dollars (\$10.00) nor more than Two Hundred Fifty Dollars (\$250.00), each sale of any such policy, contract or membership shall constitute a separate offense.

[Acts 1931, 42nd Leg., p. 247, ch. 147.]

#### Art. 14.38. Certificate of Burial Associations

Policies or certificates issued by burial associations shall provide for payment of the benefit in certain stipulated merchandise and burial service, which shall be scheduled in the policy or certificate and approved by the Board of Insurance Commissioners as being of the reasonable value as stated in the face of the policy, unless the insured shall at the time said policy is issued elect to have same paid in cash. The policy shall show in writing the election made. If the association issuing said policy shall fail or refuse to furnish the merchandise and services provided for in the policy same shall be paid in cash.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.39. Rules and Regulations

The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.40. Burial Association Rate Board

There shall be a Board, heretofore created, to be known as the "Burial Association Rate Board," to be composed of seven (7) members of which the Life Insurance Commissioner shall be an ex-officio member and Chairman. The other six (6) members shall be appointed by the Governor by and with the advice and consent of the Senate. Each of said six (6) members shall be an officer or director of a burial association and shall have had three (3) years experience as such prior to his appointment. The present terms of the appointed members of the Board shall expire June 21, 1955, as to the two (2) members appointed for the original two (2) year term; June 21, 1951, as to the two (2) members appointed for the original four (4) year term and June 21, 1957, as to the two (2) members appointed for the original six (6) year term, and thereafter, such terms shall run for six (6) years so that such memberships shall run for six (6) years and two (2) of such memberships shall expire every two (2) years. The appointed

members in office at the effective date of this code shall continue in office until the 21st day of June of the years in which their present respective terms expire and until their successors are appointed and qualified. Upon their appointment, each member shall take and subscribe to the Constitutional Oath of Office and file same with the Secretary of State. Members of this Board are specifically exempted from the provisions of Article 1.09 of this code. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.41. Compensation; Expenses**

As compensation for their services, each member of said Burial Association Rate Board shall receive Ten (\$10.00) Dollars per day for each day actually and necessarily used in attending and going to and returning from Board meetings plus their reasonable traveling and hotel expenses. Same shall be paid from the funds herein provided for upon vouchers drawn by the Secretary of the Board and countersigned by its Chairman, but provided no appropriation shall ever be made to defray the expenses of said Board except from the fund herein created; provided however, that no more than One Thousand Five Hundred (\$1,500.00) Dollars shall be expended in any single year for per diem expenses of said Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.42. Annual Assessment; Burial Association Rate Fund**

There is here now levied upon each burial association having a permit to do business in Texas and upon each burial association which may hereafter be granted a permit to do business in Texas, an annual assessment of one-half of one cent (½ of 1¢) per member in the association as of December thirty-first of each year but not less than Five (\$5.00) Dollars annually, which shall be in addition to any other fees now payable and which assessment shall be paid by each association between January first and March first of each year. Said assessments shall be paid to the Board of Insurance Commissioners of Texas along with and at the same time each association files with said Board its annual statement. Said assessment shall be based upon the calendar year and a proportionate part of said assessment for the remaining part of the current calendar year. All assessments paid to the Board of Insurance Commissioners under this article shall be and the same are here and now appropriated for and to the use and benefit of the Life Insurance Division of the Board of Insurance Commissioners; first, for the payment of the per diem and expenses of the Burial Association Rate Board including Seventy-five (\$75.00) Dollars per month as compensation to the ex-officio member and Chairman of the Board for additional duties incident to Articles 14.40 to 14.52, inclusive, which shall be in addition to his compensation as Life Insurance Commissioner; and second, the balance of such fund may be expended under direction of the Board herein created for the purpose of obtaining advice, information, and knowledge

relative to adequate and reasonable rates to be charged by burial associations of Texas and compiling records thereof. All assessments collected under this article shall be deposited in the State Treasury as a special fund to be known as the Burial Association Rate Fund to be used as and for the purposes aforesaid and are here and now appropriated for such purposes for the balance of the fiscal year ending August 31, 1951, provided, however, that thereafter such assessments shall continue to be expended under such limitations as the Legislature may designate in the general departmental appropriation bill.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.43. Meetings**

Said Board shall organize and elect one of its members as Vice-Chairman and one as Secretary and shall proceed with its duties. Such Board may adjourn its meeting from time to time and shall always be subject to call by its Chairman or by a written call signed by a majority of its members. Its meetings shall be held at the office of the Board of Insurance Commissioners of Texas or such other place as the Chairman of the Board may designate. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.44. Experience Rating; Rate Schedules Fixed**

It shall be the duty of said Board to make and file with the Board of Insurance Commissioners of Texas a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by burial associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Rate Board. Such schedule of rates shall be made and filed only after hearing, notice of which shall be sent by the Rate Board by first class mail to each burial association within this State not less than ten (10) days before the hearing. To insure the adequacy and reasonableness of rates the Rate Board may take into consideration experience gathered from a territory within this State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the burial associations. The Rate Board is hereby authorized and empowered to require sworn statements from any burial association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Rate Board shall find to be necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been so fixed and filed with the Board of Insurance Commissioners of Texas, said last named Board shall cause to be

mailed a copy of such rate schedule to each burial association having a permit to do business in Texas. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.45. Adoption and Filing of Rate Schedule by Associations**

After such rate schedule has been so mailed by the Board of Insurance Commissioners of Texas, it shall be the duty of the officers and directors of each burial association to convene and to fix and adopt a rate schedule to be thereafter used and charged by such association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the Board of Insurance Commissioners of Texas and which rates so adopted shall not be less than the minimum nor more than the maximum rates so fixed by the Burial Association Rate Board. Each burial association shall file with the Board of Insurance Commissioners, duplicate copies of the rate schedule so fixed and adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the Board of Insurance Commissioners. Such copy shall be endorsed by the Board of Insurance Commissioners showing the date of its filing and one of such copies shall be retained by the Commission and the other copy returned to the association to be kept as a part of its permanent files. With the consent of the Board of Insurance Commissioners an association may change its rates by adopting and filing with the Board of Insurance Commissioners, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as promulgated by the Burial Association Rate Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.46. Violation as to Rates; Penalties**

It shall be unlawful for any burial association, its officers, agents, or employees to charge, receive, or collect any rate, premium, or assessment from any member of said association other than the rate, premium, or assessment applicable for the age and benefit as named in said association's rate schedule on file with the Board of Insurance Commissioners and in force at that time. Any officer, agent, or employee of any burial association who charges, receives, or collects any premium or assessment in violation of this article, or any officer, of any burial association who knowingly permits it to be done, shall be guilty of misdemeanor and upon conviction shall be fined not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars. The Board of Insurance Commissioners may cancel the permit of any burial association violating the provisions of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.47. Data for Fixing Rates**

It shall be the duty of said Burial Association Rate Board to gather such data, statistics, and informa-

tion as it can from time to time as to the death rates, lapses, experiences and other information relative to burial association rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate burial association rates and which information may be disseminated by the Board among the burial associations of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.48. Limitation on Board's Power; Amendment of Schedules**

The Rate Board's duties and power shall not cease upon the filing of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of burial associations and at any time it deems proper, it may make, adopt and file with the Board of Insurance Commissioners, a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is so filed, it shall thereafter be considered the official rate schedule of burial associations. When so filed, copy thereof, shall be forwarded by the Board of Insurance Commissioners of Texas, its rate schedule to be thereafter used by it as to members thereafter accepted and such procedure shall be followed from time to time, when and as often as the Burial Association Rate Board shall make and file an amended or new rate schedule for the State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.49. Rates Used Prior to this Law**

Rates which were adopted and in use by any association prior to June 12, 1947, may be continued to be used by such burial association as to its then members, but with the consent and approval of the Board of Insurance Commissioners of Texas, any association may change such rates and make the same comply and correspond with the rate schedule last filed by such association with the Board of Insurance Commissioners as herein designated.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.50. No Connection Between Associations**

There shall be no connection directly or indirectly between two (2) or more burial associations. No member, director, or officer of one burial association shall be a member, director, or officer of any other burial association. No person whose husband, wife, or employee is an officer or director of one burial association shall be an officer or director of any other burial association. No funeral director, undertaker, or funeral home directly or indirectly connected with or designated by one burial association as its funeral director, undertaker, or funeral home shall be connected with or designated by any other burial association as its funeral director, undertaker, or funeral home to furnish its members with its services and/or merchandise or to service its policies or to be in any manner connected with its affairs.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.51. Affiliation with Funeral Home; Rules and Regulations**

It is against the public policy of this State for a funeral home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one burial association and the provisions of Articles 14.40 through 14.52 of this chapter shall be liberally construed and the Board of Insurance Commissioners shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.52. Payment in Lieu of Merchandise and Services**

If a burial association is not given the opportunity to provide the merchandise and services stipulated in the policy it shall be required to pay not less than the total amount paid into its mortuary fund for account of said policy in lieu of the stipulated merchandise and services unless a greater per cent of the face value is specified in the policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.53. Mortuary or Relief Funds; Taxes on Income**

Any company or association operating under the provisions of this chapter, may pay from the mortuary or relief funds by whatever name it may be called any taxes that may be assessed against or required to be paid by the company or association because of income to such funds.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.54. Mutual Fire Insurance Companies Not Affected**

Nothing in this chapter shall ever be construed to include or affect in any manner mutual fire insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.55. Penalty; Unlawful Conversion**

If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this chapter, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such association, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.56. Penalty; Diversion of Special Funds**

If any director, officer, agent, employee, attorney at law, or attorney in fact of any association under this chapter, shall willfully borrow, withhold or in

any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any association under this chapter, which has been set apart by law or by any valid rule or regulation of the Board of Insurance Commissioners of the State of Texas for a specific use, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.56-1. Penalty for Appropriation of Money**

Any officer or any employé of a mutual accident insurance company, incorporated under the laws of this State, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is provided in the law authorizing the organization of such company, shall be confined in the penitentiary not less than two nor more than ten years.

[1925 P.C.]

**Art. 14.57. Penalty; False Reports**

The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such association whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the association. If any officer, director, agent, employee, attorney at law or attorney in fact, of any association under this chapter shall willfully make any false affidavit in connection with the requirements of this chapter, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.58. Penalty; Violation of Board Order**

If any director, officer, agent, employee, or attorney at law or attorney in fact of any association under this chapter, shall willfully refuse or fail to comply with any lawful order of the Board of Insurance Commissioners of this State he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.59. Penalty; Violation of Other Provisions of Chapter**

If any director, officer, agent, employee or attorney at law or attorney in fact of any association under this chapter, or any other person, shall violate any of the provisions of this chapter not specifically set out in Articles 14.55, 14.56, 14.57, 14.58 and 14.46 of this chapter, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.60. Fees Appropriated**

Effective with this code, all fees paid to the Board of Insurance Commissioners by all associations regulated by this chapter shall be and the same are here and now appropriated for the balance of the fiscal year ending August 31, 1951, to the use and benefit of the Life Insurance Division of the Board of Insurance Commissioners, to be used by the Life Insurance Commissioner for the purpose of enforcing and carrying out the provisions of this chapter and other laws relating to the regulation and supervision of such associations; provided, however, that such fees shall continue to be expended under such limitations as the Legislature may designate in the general departmental appropriation bill; such fees to be deposited in the State Treasury as a special fund to be used as and for the purposes aforesaid.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 14.61. Conversion or Reinsurance of Domestic Local Mutual Aid Associations, etc., into Legal Reserve Companies**

Sec. 1. (a) Any domestic local mutual aid association; statewide life, or life, health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by whatsoever name or class designated, whether specifically named herein or not, organized and operating under the laws of the State of Texas, may convert or reinsure itself into a legal reserve insurance company operating under the provisions of Chapter 11 of this code, or be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3 of this code by conforming to the provisions of this article. When it shall be determined by a majority vote of the Board of Directors of any such association to submit the proposed change to the members of the association, said board of directors shall prepare in detail plans for making such change, and such plans shall be submitted to the Board of Insurance Commissioners. Upon receipt of such Board's written approval of such plans, or of such plans amended to meet the requirements of such Board in accordance with the provisions of said chapters, said board of directors or such officer of such association as may be authorized by its by-laws to call a meeting of its members, shall mail to each member a copy of the proposed plans and shall enclose with each copy of such plans a notice of a meeting of said members to be held not earlier than fifteen (15) days after the date of mailing of such notice.

(b) Such meeting shall be held for the purpose of ratification or rejection of the proposed change, and the members may vote in person, by proxy, or by mail; provided that all votes shall be cast by ballot, and the Chairman of the meeting shall supervise and direct the method of procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification

of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the association the result thereof, under such rules and regulations as shall be prescribed by the Board of Insurance Commissioners. A majority vote cast shall be sufficient for ratification of said change.

(c) When such association shall have complied with the provisions of this Article and the other laws of this State regulating the incorporation of such mutual legal reserve insurance companies, and shall have received from the Board of Insurance Commissioners its charter and certificate of authority to transact business as a mutual insurance company, its reorganization and conversion shall be complete. Such reorganized and converted or reinsured corporation shall be deemed in law to have the rights, privileges, powers and authority of any other corporation organized in accordance with the provisions of said Chapters. The new corporation shall be deemed in law to be a continuation of the business of the former association and shall succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association, and the title to any real estate by deed or otherwise vested in the former association shall forthwith vest in such organized converted corporation and the title thereto shall not in any way be impaired by reason of such change or reincorporation. The standing of all claims under the former association shall be preserved unimpaired under the new corporation, and all debts, liabilities and duties of the former association shall thenceforth attach to the reorganized corporation and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, except that the liabilities created under the terms of policies or certificates outstanding at the date of conversion or reorganization may be altered in accordance with the provisions of said plans approved by the Board of Insurance Commissioners; provided, however, that no alteration shall be made in the renewability or noncancellability of any insurance agreement, contract, policy or certificate theretofore made or issued.

Sec. 2. The sums of any mortuary funds belonging to such association shall thereafter be effectually the property of such organized and converted corporation or corporation reinsuring the membership of such association, but may be disbursed for payment of valid claims outstanding and arising thereafter from policies issued by the legal reserve company to

the members of the assessment association under the approved agreement; to set up the legal reserve on new policies issued by the legal company to the members of the assessment association under said agreement; and to pay their actuarial portion of such mortuary fund to members of such association who refuse to accept the new policies offered them, and who make request therefor within sixty (60) days from the date of conversion or reinsurance.

The effective date of the legal reserve policies may be the effective date of the reinsurance contract. On conversion ten (10%) per cent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders, and the balance of the mortuary credit may be applied in either of the following ways:

- (a) As a reserve credit to permit the legal reserve policy issued to be dated back as far as the reserve credit will permit; or
- (b) As an annuity to reduce the required premium either for a given term or for the whole of life.
- (c) No change shall ever be made until same shall have been approved by the Board of Insurance Commissioners.

Sec. 3. Providing further that nothing in this article or in the provisions of Chapter 11 or Chapter 3 of this code shall ever be construed to mean that any of the associations or other similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to make the change herein provided for unless they voluntarily decide to do so, and that this article is purely permissive and if such associations do not so voluntarily decide to come under this article, or laws amended by it, then this article shall not in any way apply to such association.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 1187, ch. 466, § 1.]

#### Art. 14.62. Reinsurance

Companies and associations operating under the provisions of this Act may enter into reinsurance contracts or agreements with legal reserve companies authorized to write life, health, and accident insurance in this State with capital or surplus of at least One Hundred Thousand Dollars (\$100,000), and pay the premiums for such reinsurance out of the mortuary or claim funds. Provided, that such reinsurance contracts or agreements shall be subject to the approval of the Board of Insurance Commissioners of Texas, and that no company or association shall pay more out of its mortuary or claim fund for such reinsurance than is currently received by the mortuary or claim fund on the policies or members reinsured. Within thirty (30) days from the effective date of this Act, the Board of Insurance Commissioners shall issue instructions outlining the con-

ditions under which such contracts or agreements will be approved.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 14.63. Conversion of Local Mutual Aid Association or Statewide Mutual Assessment Company into Stock Legal Reserve Life Insurance Company

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association doing business in this State on January 1, 1955, may convert into a stock legal reserve life insurance company, provided such company or association so converted has at least One Hundred Thousand (\$100,000.00) Dollars in its claim or mortuary fund at the time of such conversion and complies with the following provisions:

a. There shall be contributed in cash of the United States the additional sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus.

b. All policies of insurance in force shall be exchanged for a legal reserve policy in accordance with the provisions of Section 2 of Article 14.61 of this Code.

c. Such conversion shall only be made upon a vote of the membership duly called for such purposes. Pursuant to such authorization, the board of directors and officers of such company or association shall amend its existing charter or articles of association, as the case may be, so as to comply with the requirements contained in Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof.

d. After the exchange of such mutual assessment policies for legal reserve policies in accordance with the provisions of Section 2 of Article 14.61, the proper legal reserve required by Chapter 3 of this Code, as amended, shall be established and maintained for such policies so as to leave the capital of the company at all times unimpaired and not less than Fifty Thousand (\$50,000.00) Dollars.

e. After compliance with the provisions hereof, and approval of the same by the Attorney General of the State of Texas and the Board of Insurance Commissioners, such company or association shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) operate in any territory not previously authorized under the old charter or articles of association, as the case may be; nor (2) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (3) declare or pay any cash dividends; unless and until the capital and surplus of such converted company or association shall be increased to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code.

Sec. 2. Any such company or association so converted shall within ten (10) years from the date of its conversion increase its capital and surplus to the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of the Insurance Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners.

Sec. 3. From and after the date of such conversion such legal reserve stock life insurance company shall be governed by the provisions of Chapter 3 of the Insurance Code, as amended, except as otherwise herein provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 916, ch. 363, § 22.]

**Art. 14.64. Issuance of Life Insurance Policies by Local Mutual Aid Associations or Statewide Mutual Assessment Companies**

Each local mutual aid association or statewide mutual assessment company possessing a mortuary fund and expense fund combined in at least the sum of \$100,000.00 above all liabilities of such combined funds may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that: (1) no individual life shall be insured for more than \$5,000.00, (2) each such policy shall be reserved as required under the provisions of Chapter Three of this Insurance Code, and (3) each such life policy shall be issued only upon an endowment or limited pay basis.

[Acts 1971, 62nd Leg., p. 1311, ch. 346, § 2, eff. May 24, 1971.]

**CHAPTER FIFTEEN. MUTUAL INSURANCE COMPANIES OTHER THAN LIFE**

Article

- 15.01. Who May Incorporate.
- 15.02. Articles of Incorporation.
- 15.03. Name of Company.
- 15.04. Certificate of Incorporation.
- 15.05. Powers and By-Laws.
- 15.06. Kinds of Insurance.
- 15.07. Meet Same Legal Requirements of Other Companies Writing Bonds.
- 15.08. Conditions to Obtain License.
- 15.09. Corporation May Contract With.
- 15.10. Votes of Members.
- 15.11. Provisions of Policy.
- 15.12. May Advance Money.
- 15.13. Reserves.
- 15.14. Foreign Mutual Company.
- 15.15. Subject to General Laws.
- 15.16. No Exemption from General Laws.
- 15.17. Reinsurance.
- 15.18. Taxes and Fees.
- 15.19. Rights and Privileges of Certain Companies Retained.
- 15.19-1. Failure to Report Condition; Penalty.
- 15.19-2. False Statement or Misappropriation; Penalty.
- 15.20. Provisions Controlling as to Mutual Insurance.
- 15.20-1. Penalty for Noncompliance.
- 15.21. Penalty for Violation of Act.

**Art. 15.01. Who May Incorporate**

Any number of persons not less than twenty (20), a majority of whom shall be bona fide residents of this State, by complying with the provisions of this chapter, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.02. Articles of Incorporation**

Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

(a) The name, the purpose for which formed, and the location of its principal or home office, which shall be within this State;

(b) The names and addresses of those composing the board of directors in which management shall be vested until the first meeting of members;

(c) The names of places of residence of the incorporators.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.03. Name of Company**

No name shall be adopted by such company which does not contain the word "mutual," or which is so similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.04. Certificate of Incorporation**

Applicants for such Articles of Incorporation shall comply with and be subject to the provisions of Article 2.01 of this Code except:

1. The minimum number of persons adopting and signing such Articles of Incorporation shall be governed by Article 15.01 of this Chapter; and

2. Free surplus shall constitute capital structure within the meaning of Article 2.01.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 25.]

**Art. 15.05. Powers and By-Laws**

The company shall have legal existence from and after the date of issuance of said certificate. The company shall have such powers as are necessary or incident to the transaction of its business. The Board of Directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to transact the business of such company; provided, that no insurance shall be put into force until the company has been licensed to transact insurance as provided by this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.06. Kinds of Insurance**

Any company organized under the provisions of this Chapter is empowered and authorized to write any kinds of insurance, which may lawfully be written in Texas, except life insurance. Any such company writing fidelity and surety bonds shall keep on deposit with the State Treasurer cash or securities as provided in Article 2.10 approved by the Board equal in amount to that required of domestic stock companies. Any such company shall be possessed of a surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. Mutual insurance companies operating under the provisions of this Chapter shall be required to charge the rates prescribed by the Board of Insurance Commissioners and be subject to the same rates and reserve supervision that domestic insurance companies are subject to by law.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 177, § 26.]

**Art. 15.07. Meet Same Legal Requirements of Other Companies Writing Bonds**

Any mutual insurance company qualifying to write bonds under this chapter shall meet the same legal requirements as all other insurance companies who are writing bonds under this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.08. Conditions to Obtain License**

No company organized under this Chapter shall issue policies or transact any business of insurance unless and until its charter is granted as provided in this Code and unless and until the Board has, by issuance of Certificate of Authority, authorized it to do so. The provisions of Article 2.20 of this Code shall apply to all renewal Certificates of Authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 27.]

**Art. 15.09. Corporation May Contract With**

Any public or private corporation, board or association in this State or elsewhere may make application, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this State to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.10. Votes of Members**

Every member of the company shall be entitled to one vote, or to a number of votes based upon the

insurance in force, the number of policies held, or the amount of premium paid, as may be provided in the by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.11. Provisions of Policy**

The maximum premium shall be expressed in the policy of a mutual company organized under this Chapter, and it may be solely a cash premium or a cash premium and an additional contingent premium, which contingent premium shall be equal in amount to one (1) additional cash premium, but no such company shall issue an insurance policy for a cash premium and without an additional contingent premium until and unless it possesses a surplus above all liabilities of a sum at least equal to the minimum capital and surplus required of a stock insurance company transacting the same kinds of business.

When any company shall issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums set forth in policies then outstanding. The issuance of policies for cash premiums only in pursuance of this Article may not be exercised by any such company until written notice of its intention so to do accompanied by a certified copy of the resolution of the Board of Directors providing for the issuance of such policies shall have been filed with and approved by the Board. Policyholders of a mutual insurer shall at no time be liable for assessment on policies issued at a time when such approval by the Board is in effect. Neither the officers nor directors of any such mutual insurer, the Board of Insurance Commissioners, nor any receiver or liquidator shall have authority to levy assessments upon the holders of such policies.

A foreign mutual insurance company authorized to do business in Texas may issue an insurance policy for a cash premium and without an additional contingent premium and may waive contingent premiums on outstanding policies under the same conditions and subject to the same restrictions and provisions as a mutual insurance company organized under this Code and doing the same kinds of business.

If up to the time of the effectiveness of this Act a mutual insurance company was authorized to write non-assessable policies in Texas under the provisions of this Code, such mutual company shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 28.]

**Art. 15.12. May Advance Money**

Any director, officer or member of such company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose

of its business or to enable it to comply with any requirements of the law and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum shall be payable only out of the surplus remaining after providing for all reserve, other liabilities and lawful surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advances shall be reported in each annual statement.

[Act 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.13. Reserves

Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.14. Foreign Mutual Company

Any such mutual insurance company organized outside of this State and authorized to transact the business of insurance on the mutual plan in any state, district or territory, shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this chapter when it shall be solvent under this chapter, and shall have complied with the following requirements:

(a) Filed with the Board of Insurance Commissioners a copy of its by-laws certified to by its secretary;

(b) Filed with the said Board a certified copy of its charter or articles of incorporation;

(c) Appointed the Chairman of the said Board its agent for the service of process, in any action, suit or proceedings in any court of this State, which authority shall continue as long as any liability shall remain outstanding in this State;

(d) Filed a financial statement under oath, in such form as the Board may require, and have complied with the other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance;

(e) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this State as to be confusing or misleading.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.15. Subject to General Laws

Every such mutual insurance company, whether organized within or without the state, shall be subject, except as otherwise provided by law, to all

general provisions of law applicable to stock insurance companies transacting the same kinds of insurance, investments, valued policies, policy forms and rates, reciprocal or retaliatory laws, insolvency and liquidation, publication and defamatory statements, and shall make its annual report in such form and submit to such examination and furnish such information as may be required by the Board. As far as practicable such examinations of mutual insurance companies organized outside of this State shall be made in cooperation with the insurance departments of other states and the forms of annual report shall be such as are in general use throughout the United States.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.16. No Exemption From General Laws

Nothing in this chapter shall be construed to mean that any company or association incorporated or organized hereunder shall be exempt from the provisions of the General Laws of this State, heretofore or hereafter enacted governing the incorporation, organization, regulation and operation of companies or organizations writing insurance in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.17. Reinsurance

Any such mutual insurance company organized or admitted to transact insurance in this State may by policy, treaty or other agreement cede to or accept from any insurance company or insurer reinsurance upon the whole or any part of any risk which reinsurance shall be without contingent liability or participation or membership unless the contract provides otherwise and shall not be effected with any company or insurer disapproved therefor by written order of the Board of Insurance Commissioners filed in its office.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.18. Taxes and Fees

Every such company, whether organized within or without this State shall be subject to such fees as are now provided by law for stock companies doing the same kind of business and to such taxes as may be provided by law for such mutual companies. The tax shall be paid upon the gross premiums received for direct insurance upon property or risks located in this State, deducting premiums upon policies not taken, premiums returned on cancelled policies and any refund or return made to the policyholders other than for losses.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 15.19. Rights and Privileges of Certain Companies Retained

Rights and privileges of companies affected by the repeal of Chapters 5, 9, 12, 13, 14 and 15 of Title 78 of the Revised Civil Statutes of 1925, shall remain in effect to the extent set out in the Acts 1929, 41st Legislature, 1st Called Session, page 90, Chapter 40, Section 18 as amended Acts 1929, 41st Legislature, 2nd Called Session, page 99, Chapter 60, Section 1.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.19-1. Failure to Report Condition; Penalty**

If at any time the admitted assets of any mutual company operating under the law providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner of Insurance, and he may make an examination into the company's affairs if he deems best, and if such president and secretary shall fail to report the company's condition as so required, they shall each be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

**Art. 15.19-2. False Statement or Misappropriation; Penalty**

Whoever shall intentionally submit a false statement, or intentionally misappropriate the funds of mutual companies organized under the laws providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall be confined in the penitentiary not less than five nor more than ten years.

[1925 P.C.]

**Art. 15.20. Provisions Controlling as to Mutual Insurance**

No sort of mutual insurance, other than life insurance, may be conducted in this State, except under the provisions of this law, or under some law remaining on the statutes authorizing the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 15.20-1. Penalty for Noncompliance**

Any person who shall transact the business of mutual fire insurance in this State without complying with the laws regulating such business shall be fined not less than fifty nor more than five hundred dollars.

[1925 P.C.]

**Art. 15.21. Penalty for Violation of Act**

Any person or corporation violating the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

[Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 20.]

**CHAPTER SIXTEEN. FARM MUTUAL INSURANCE COMPANIES**

Article

- 16.01. Farm Mutual Insurance Companies; Definitions.
- 16.02. Kinds of Insurance Authorized.
- 16.03. Formation of Company.
- 16.04. Charter and Articles of Incorporation; Contents.
- 16.05. Application for Permission to Solicit Insurance.
- 16.06. Conditions of Incorporation.
- 16.07. Location of Business.
- 16.08. Meetings.

Article

- 16.09. Voting by Policyholders.
- 16.10. Organization of Local Chapters.
- 16.11. By-Laws.
- 16.12. By-Laws as Part of Contracts.
- 16.13. Provision Against Waiver of By-Laws.
- 16.14. Premiums and Assessments.
- 16.15. Policyholders' Liabilities.
- 16.16. Directors; Qualifications; Term.
- 16.17. Directors Power to Borrow.
- 16.18. Charter to Prescribe Power of Directors.
- 16.19. Reserve Fund.
- 16.20. Removal of Officers or Employees.
- 16.21. Reciprocal Insurance Contracts.
- 16.22. Annual Reports to Policyholders and to the Board.
- 16.23. Biennial Examination by the Board.
- 16.24. Solvency.
- 16.25. Companies Regarded as Farm Mutual Insurance Companies.
- 16.26. Meet Requirements of This Chapter.
- 16.27. Fees; Certificate of Authority or Renewal; Annual Statement.
- 16.28. Exemption from Insurance Law.

*Acts 1973, 63rd Leg., p. 292, ch. 139, rewrote Chapter 16 of the Insurance Code (former Articles 16.01 to 16.28) as Articles 16.01 to 16.27.*

**Art. 16.01. Farm Mutual Insurance; Definitions**

(a) Farm mutual insurance companies are companies organized on the mutual or cooperative plan against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft and land vehicles, and heretofore issued a certificate of authority by the State Board of Insurance to operate under the provisions of Chapter 16 of the Insurance Code; such farm mutuals are authorized to write insurance against loss or damage from any hazard specified herein or that any other fire or windstorm insurance company operating in Texas under the provisions of Chapter 6 of the Insurance Code may write on property below specified.

(b) Farm mutual insurance companies may insure rural and urban dwellings and attendant outhouses and yard buildings, and all their contents for home and personal use, including family vehicles, musical instruments and libraries, barns and ranch buildings of every description together with vehicles and implements used thereon; agricultural products produced or kept on farms and ranches. No building, or its contents, with more than 40 per cent of its floor space or more than 500 square feet of floor space, whichever is the lesser amount, used for business purposes may be insured by a farm mutual insurance company except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated.

(c) Each farm mutual insurance company shall include the words "Farm Mutual" or "Farmers Mutual" in its name, and must maintain a majority of its total insurance in force on rural property at all times at the time of writing thereof, and operate on a regular and special assessment basis and use not more than 25 per cent (25%) of their gross income for expenses unless otherwise approved by the Commissioner of Insurance. "Rural property" shall

mean any property located outside an urban area. "Urban area" as used herein shall mean that land area subject to the taxing authority of any incorporated city or town having a population by the last published federal census figures of more than 2,500 inhabitants. Property located in what is defined as rural property by the preceding sentence at the time it is first insured shall thereafter continue to be classified as rural property so long as insurance thereon continues by policy or policies written by the same farm mutual insurance company without lapse in effective coverage for longer than sixty (60) days.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 29; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Section 2 of the 1973 amendatory act provides: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions and applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### **Art. 16.02. Farm Mutual Insurance Companies Shall Not Insure Against**

No farm mutual insurance company shall assume or issue any contract of insurance that seeks to indemnify an insured for liability incurred by the insured to third parties for the commission of any tortious act by the insured. No farm mutual insurance company shall assume or issue any contracts of insurance covering the liability of any insured under a contract to maintain, hold or store property belonging to others.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### **Art. 16.03. Farm Mutual Companies Formed**

(a) Farm mutual companies now chartered and duly operating under Chapter 16, Insurance Code, and having heretofore issued to them a certificate of authority by the State Board of Insurance may renew their charters as provided in Article 16.21 of this chapter.

Those farm mutual companies or associations now operating under a certificate of authority issued by the State Board of Insurance which were organized and operating prior to April 6, 1937, but not yet incorporated, shall be granted a charter as provided in Article 16.21 of the Insurance Code if application therefor is made prior to the expiration of three (3) years from the effective date of this Act.

(b) Any association of individuals which has not prior to the effective date of this Act been issued a certificate of authority by the State Board of Insurance will be required to secure a charter in compliance with Articles 16.04, 16.05 and 16.06 of the Insurance Code dealing with incorporation of companies not heretofore issued such a certificate of authority, and must show that it has theretofore been in existence as a bona fide association of individuals for a period of not less than three years, containing a membership of not less than 100 persons, operating under a system of subordinate lodges, or locals, or districts, without capital stock, organized and carried on solely for the mutual benefit of its members, and

not for profit, having a representative form of government, operating for the purpose of membership recreation or membership welfare, and who now have by a majority vote of said association decided to apply for a charter as a farm mutual insurance company under the provisions of this Chapter 16.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### **Art. 16.04. Charter and Articles of Incorporation of Companies Not Holding a Certificate of Authority; Contents**

The charter and articles of incorporation of a farm mutual or farmers mutual insurance company not holding a certificate of authority on the effective date of this Act shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, all of whom must be bona fide inhabitants in any one or more adjoining counties in this state, owning each not less than \$5,000.00 of insurable property, and have applied in writing for insurance thereon in the company to be formed, and which charter is to be acknowledged before a notary public by not less than five (5) of them and all charter members are members of an association as described in Article 16.03(b).

It shall state the name of the company which shall include the words "Farm Mutual" or "Farmers Mutual," the place of its principal office, the number, names and post office addresses of its first directors, who shall not be less than five (5), the kind of property it will insure, and the risk to be insured against; and such other provisions as the incorporators may desire to set out therein in keeping with this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### **Art. 16.05. Application for Permission to Solicit Insurance by Companies Not Holding a Certificate of Authority**

Any ten (10) or more of such inhabitants, desiring to form a farm mutual insurance company, may apply to the State Board of Insurance for permission to solicit insurance on the mutual or cooperative plan, which application shall state:

(a) That not less than one hundred (100) individuals have heretofore been members of an association as described in Article 16.03(b) and said association has by majority vote indicated its desire to insure property of its members under Chapter 16 of the Insurance Code and for said association to be chartered as a farm mutual insurance company;

(b) The name of the company shall include the words "Farm Mutual" or "Farmers Mutual;"

(c) The locality of the principal business office of such company;

(d) The risks the company proposes to insure;

(e) The names and places of residence of not less than ten (10) persons making such application;

(f) An affidavit of at least two (2) of such applicants correctly stating the names and residences of such applicants and verifying the facts stated in the application.

Upon receipt of such application, together with a Twenty-five (\$25.00) Dollar fee for filing same, the State Board of Insurance shall examine it and upon finding that it complies with this chapter shall issue a permit for a period of six (6) months, authorizing said applicants to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application, but not to issue policies of insurance or pay losses. Such permit may be renewed as often and as long as the State Board of Insurance finds it necessary upon application therefor and upon the payment of Ten (\$10.00) Dollars for each renewal. Moneys collected from applicants for insurance shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.06. Conditions of Incorporation for Companies Not Heretofore Holding a Certificate of Authority

Before a charter shall be granted a farm mutual insurance company not heretofore holding a certificate of authority from the State Board of Insurance, the incorporators must have on hand:

(a) Not less than one hundred (100) applications in writing for insurance on not less than four hundred (400) separate risks; provided that no one (1) risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one (1) or more items of real estate and its contents, if any, which is not exposed to any other property on which insurance is applied for in the new company;

(b) The free surplus required herein in cash. All companies organized after the effective date of this Act under this Chapter must have received a charter to operate and shall at time of incorporation and at all times thereafter have free surplus equal to \$2.00 for each \$100.00 of insurance in force, or \$200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. Funds in excess of such minimum surplus may be invested as now provided in Article 2.10 of this Code or as amended in the future. If such free surplus is at any time impaired, it must be restored without delay under the provisions of this Chapter; the State Board of Insurance shall proceed as is provided

in Section 5 of Article 1.10 of this Code as it now exists or as amended in the future.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1020, ch. 421, § 1; Acts 1955, 54th Leg., p. 413, ch. 117, § 30; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.07. Location of Business

A farm mutual insurance company may write insurance (a) in the county where its home office is located at the time of incorporation and in any county adjoining the county in and for which it is organized; or (b) in any county in which no farm mutual insurance company has been organized; or (c) anywhere in Texas if its reserve fund exceeds the sum of Two Hundred Thousand (\$200,000.00) Dollars in cash or securities in which the reserve fund of stock fire insurance companies may be invested; provided, however, that the provisions of this entire article shall not apply to any farm mutual insurance company now organized and operating in Texas and having heretofore been issued a certificate of authority under Chapter 16 prior to the effective date of this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1020, ch. 421, § 2; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.08. By-Laws

(a) The by-laws will state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

(b) They shall also fix the liability of the policyholders for all losses accrued while the policies are in force in addition to the regular premium or assessments for the same and the time and manner of the payment of such liability; provided that the amount of such contingent liability shall never be less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance in such policy.

(c) Farm mutual companies may adopt all rules, regulations, provisions and requirements contained in the standard policies of companies writing fire or windstorm insurance as promulgated from time to time by the State Board of Insurance, insofar as they are applicable to farm mutual insurance companies, as a part of their by-laws and contracts of insurance, which adoption shall be evidenced either by statement to that effect in the by-laws or in the policies.

(d) The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed, provided such provision may be made equally applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homesteads and exempt personal property. Provided also, that farm mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

(e) By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

(f) The by-laws of farm mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

(g) The meetings of the policyholders of farm mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third ( $\frac{1}{3}$ ) of the Directors of the Company, or the State Board of Insurance.

Each policyholder in a farm mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.  
[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.09. Provision Against Waiver of By-Laws

Such companies may provide in their by-laws that local chapters, and the officers and agents elected by such local chapters, company adjusters or appointed representatives, do not have the power to waive any provision of the constitution, by-laws or policy.  
[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.10. Premiums and Assessments

All premiums and assessments, including the contingent liability of policyholders for all insurance written by farm mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remain the property of the insured.

If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien,

together with all costs of suit including a reasonable attorney's fee.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.11. Policyholders' Liabilities

Policyholders shall be liable for losses of the company only as prescribed in the constitution and by-laws of the company, and that only in proportion that the premiums or assessments for the insurance of any policy bear to the total amount of the premiums or assessments for all the insurance in the class to which the policy belongs.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 1020, ch. 421, § 3; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.12. Directors; Qualifications; Term

Directors of farm mutual insurance companies shall hold their office for one (1) year after their election, and until their successors qualify, unless otherwise provided in their constitution and by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than Three Thousand (\$3,000.00) Dollars each in a company, shall be eligible to become or remain directors of the same. When a director reduces his said insurance below such amount, he shall no longer be qualified to act as such director.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.13. Directors' Power to Borrow

The Board of Directors of farm mutual insurance companies may, acting by and through its duly authorized officers, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.14. Powers of Directors

The Board of Directors of farm mutual insurance companies shall have all powers granted by Chapter 16, and those granted by the charter, constitution and by-laws if not in conflict with the provisions of this Chapter 16.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.15. Reserve Funds

The Board of Directors of farm mutual insurance companies may provide for the accumulation of reserve funds, to be invested in such securities as the reserve funds of other fire insurance companies are by law required to be invested.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.16. Removal of Officers or Directors**

The Board of Directors of a company may at any time, in any meeting by a two-thirds (2/3) majority vote of all the directors, remove any officer or director of the company from his office without assigning any reason therefor, and name another person or persons to assume the duties of the one or ones removed, and to fill any unexpired term, when, in their judgment, it shall be deemed to the best interest of the company.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.17. Reciprocal Insurance Contracts**

Farm mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on a mutual or cooperative plan; provided that no farm mutual shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a farm mutual reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a farm mutual shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.18. Annual Reports to Policyholders and to the Board**

Farm mutual insurance companies shall annually make and submit written reports to their policyholders showing (a) the rate and total amount of premiums or assessments paid during the year for their insurance, (b) the operating expenses, (c) the names of the claimants and the amounts paid each for the losses suffered; and make available to each policyholder a copy of such report as and when prescribed in the by-laws of the company; provided, however, that it shall not be necessary to report the names and amounts of claims of policyholders of one class of insurance to the policyholders in another class, unless the policyholders in such other class are liable for the losses of the former class.

They shall also make such reports annually to the State Board of Insurance as the Board may require of them, or as shall be required by law.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.19. Examinations by the Board**

The State Board of Insurance shall as often as it deems necessary, examine farm mutual insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.20. Solvency**

A farm mutual insurance company or association shall be considered solvent and entitled to continue business if its assets, including the contingent liability of its policyholders for its losses, are reasonably sufficient to pay its losses, according to the terms of the policies and it has not impaired its required free surplus, if any, to any extent in excess of 16% per cent of such surplus.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.21. Renewal of Charters or Securing of Charters by Farm Mutual Insurance Companies in Operation Prior to April 1937**

Any farm mutual insurance company, organized and in business prior to April 6, 1937, and still in business, may at any time before its charter expires by lapse of time, have its charter extended perpetually, and shall, under the extended charter, continue to have and enjoy all the rights, privileges and immunities that it had under the original charter; provided, however, that it is first authorized to extend its said charter either by a two-thirds majority vote of all of its directors, or by a simple majority vote of those voting at a meeting of its policyholders. The application for such extensions shall set out in haec verbae the charter to be extended and it shall state the time to which it is to be extended and be signed and acknowledged by the president and secretary of the company.

Any such company whose charter has expired or may hereafter expire by lapse of time, but is or shall be still doing business in this State, may have its charter renewed for a perpetual term from the time of the expiration of the former existing charter in like manner as charters may be extended as provided in the paragraph preceding, and from the time of such renewal it shall be entitled to all the rights, privileges and immunities it had and enjoyed under the prior existing charter.

Any such unincorporated farm mutual insurance company which has heretofore been in business prior to April 6, 1937, and is still in business, and permitted currently to operate under a certificate of authority issued by the State Board of Insurance and has paid all its losses promptly according to contract, shall at any time prior to the expiration of three (3) years from the effective date of this Act, when authorized to do so by two-thirds of its directors, or by a majority vote of its policyholders voting at any annual meeting or special meeting called for that purpose, apply for a charter and be incorporated for a perpetual term as a farm mutual insurance compa-

ny under this chapter without compliance with the preceding Articles 16.03, 16.04, 16.05 and 16.06. The application for such charter shall state its name, its purpose, the location of its principal office, the number and names of its directors, and the nature and value of its assets, and it shall be signed and acknowledged by its president and secretary. It shall thereupon be entitled to a charter and to function and do business as a farm mutual insurance company, and to enjoy the same rights, privileges and immunities that it had and enjoyed as an unincorporated company, except as otherwise herein provided.

Any such unincorporated farm mutual insurance company until receiving its charter shall nevertheless be subject to the provisions and requirements of this chapter to the extent pertinent.

Such fire or storm mutual insurance companies as included in this article, heretofore operating under the now repealed provisions of 4860a-20, Revised Civil Statutes of Texas, shall become subject to the provisions and requirements of this chapter in lieu of any act heretofore governing such companies. Any such company shall have the right to change its name so as to include the words "Farm Mutual" or "Farmers Mutual," and may amend its constitution and by-laws and/or charter for the purpose of adopting any provision or meeting any requirement of this chapter. The Board shall charge and collect a filing fee of Ten (\$10.00) Dollars for each amendment to the charter of any such company.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.22. Fees

For the renewal and extension of the granting of any charter, the Board shall charge and collect a filing fee of Ten (\$10.00) Dollars and a like amount for any amendment to the charter of any such company.

The Board shall charge a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter, and for filing such annual statement required by the Board, it shall charge a filing fee of Twenty (\$20.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.23. Applicability of the Texas Non-Profit Corporation Act

Insofar as the same are not inconsistent with or contrary to any applicable provision of this chapter as it now exists or may be amended in the future, the provisions of the Texas Non-Profit Corporation Act shall apply to and govern farm mutual insurance companies, provided, however, that wherever said Texas Non-Profit Corporation Act<sup>1</sup> imposes some duty, authority, responsibility, power; or some act is vested in, required of, or is to be performed by the Secretary of State, such is hereby vested in,

required of, or shall be performed by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

<sup>1</sup> Civil Statutes, art. 1396-1.01 et seq.

#### Art. 16.24. Exemption from Insurance Law

(a) Unless farm mutual insurance companies are expressly mentioned, no provision of the Insurance Code, except as contained in this chapter, shall be applicable to insurers holding a certificate of authority under this chapter and no law hereinafter enacted shall apply to such companies unless such subsequent enactment states that it shall apply.

(b) Regardless of the preceding portion of this Article, Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.29, 2.08, 2.10, 3.12, 3.13, 3.14, 6.16, 21.21, 21.25, 21.28, 21.28A, 21.28B, 21.39-A, and Sections 10(a), (b) and (c) of Article 3.01 and Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 17 of Article 1.10 of the Insurance Code as they now exist or shall hereafter be amended shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.25. Companies Organized Between 1955 and the Effective Date of this Act

All farm mutual insurance companies organized between January 1, 1955, and the effective date of this Act shall always have a free surplus of \$2.00 for each \$100.00 of insurance in force; or a free surplus of \$200,000.00 whichever amount is less.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.26. Unconstitutional Application Prohibited

This chapter and law do not apply to any insurer or other person to any extent that it cannot validly apply under the Constitution of the United States or the Constitution of the State of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

#### Art. 16.27. Authority of the State Board of Insurance

The State Board of Insurance is hereby vested with power and authority under this Act to promulgate, after public hearing, and enforce rules and regulations concerning the application to farm mutual insurance companies of the Articles referred to in Article 16.24 of the Insurance Code and for the clarification, amplification and augmentation of the terms and provisions of Chapter 16 of the Insurance Code (as it now exists or as it may be amended in the future) which in the discretion of said Board are deemed necessary to accomplish the purposes of this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

**Art. 16.28. Exemption from Insurance Laws**

Farm mutual insurance companies shall be exempt from the operation of all insurance laws of this State, except as herein specifically provided. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

**CHAPTER SEVENTEEN. COUNTY MUTUAL INSURANCE COMPANIES**

## Article

- 17.01. County Mutual Insurance Companies; Definitions.
- 17.02. Formation of Company.
- 17.03. Application for Permission to Solicit Insurance.
- 17.04. Charter and Articles of Incorporation; Contents.
- 17.05. Conditions of Incorporation.
- 17.06. By-Laws; Additional Provisions.
- 17.07. Organization of Local Chapters.
- 17.08. Premiums and Assessments.
- 17.09. Policyholders' Liabilities.
- 17.10. Directors Power to Borrow.
- 17.11. Financial Requirements and Impairment of Surplus.
- 17.12. Directors; Qualifications; Term.
- 17.13. Charter to Prescribe Power of Directors.
- 17.14. Voting by Policyholders.
- 17.15. Meetings.
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- 17.18. Biennial Examination.
- 17.19. Extension of Charters.
- 17.20. Reciprocal Insurance Contracts.
- 17.21. Fees.
- 17.22. Exemption from Insurance Laws.
- 17.23. By-Laws as Part of Contracts.
- 17.24. Provision Against Waiver of By-Laws.
- 17.25. County Mutual Insurance Companies.

**Art. 17.01. County Mutual Insurance Companies; Definitions**

County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant outhouses and yard buildings and all their contents for home and personal use—including family vehicles, musical instruments and libraries;

(b) On barns and other farm, dairy, truck garden, hennery and ranch buildings and improvements of every description;

(c) On all vehicles, harness, implements, tools and machinery of every kind and description used on and about farms, truck gardens, dairies, henneries or ranches;

(d) On all fruits and products, other than growing crops, and all fowls, domestic animals and livestock of every description, produced, raised, grown, kept or used on truck gardens, henneries, farms, ranches and dairies; and

(e) On church houses, country school houses, country lodge rooms and country recreation halls, other than road houses and public dance halls and their contents.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 17.02. Formation of Company**

No county mutual insurance company may be formed under the provisions of this Chapter after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment. County mutual insurance companies formed prior to the effective date of this Act and actively engaged in the insurance business at the time of such effective date or formed pursuant to permit issued prior to the effective date of this amendment under Article 17.03 shall be permitted to engage in business in accordance with the provisions of Chapter 17, as amended, and other applicable laws; provided, however, that neither the provisions of this Act nor the provisions of Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953, effective May 22, 1953,<sup>1</sup> shall apply to any county mutual insurance company organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly or quarterly basis on a continuous premium payment plan. Provided further, that this exemption shall apply only so long as said companies are engaged exclusively in the writing of such industrial fire insurance policies. Section 22 of Article 17.25 is hereby repealed.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 31.]

<sup>1</sup> Article 17.05 et seq.

**Art. 17.03. Application for Permission to Solicit Insurance**

Permits issued prior to the effective date of this amendment pursuant to the provisions of Article 17.03 shall expire by their present terms and shall not be renewed. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 32.]

**Art. 17.04. Charter and Articles of Incorporation; Contents**

The charter and articles of incorporation of a county mutual insurance company shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, and be acknowledged before a notary public by not less than five (5) of them.

It shall also state the name of the company, which shall include the words "County Mutual Insurance Company," the place of its principal office; the number, names and post office addresses of its first directors, the number never to be less than five (5); and such other provisions as the incorporators may desire to set out therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 17.05. Conditions of Incorporation**

Before a charter shall be granted a county mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real or personal property which is not exposed to any other property on which insurance is applied for in the new company;

(b) Not less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance applied for at the time of incorporation, in cash or securities in which the reserve funds may be invested;

(c) Not less than Ten Thousand (\$10,000.00) Dollars in free surplus which shall be in cash or securities in which its reserve funds may be invested, if the company is organized to write insurance locally in the county of its domicile and any adjoining counties; if such company is organized to write insurance in any county within this State, its surplus requirement as provided herein shall be Twenty-Five Thousand (\$25,000.00) Dollars in cash or securities in which its reserve funds may be invested; and

(d) Said application for charter shall also be accompanied by a copy of the by-laws of the company, and the bond of the secretary or manager of the same in such sum and conditioned as the Board may determine.

When the foregoing requirements have been complied with to the satisfaction of the Board of Insurance Commissioners, the Board, upon the payment of a fee of Fifty (\$50.00) Dollars, shall issue such company a charter to do business as an incorporated company.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 540, ch. 196, § 1.]

**Art. 17.06. By-Laws; Additional Provisions**

The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policyholders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of such liability; provided that the amount of such liability shall be \$2.00 for each \$100.00 of insurance in such policy.

The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed; provided such provision may be equally

made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. County mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 540, ch. 196, § 2; Acts 1955, 54th Leg., p. 413, ch. 117, § 33.]

**Art. 17.07. Organization of Local Chapters**

The by-laws of county mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 17.08. Premiums and Assessments**

All premiums and assessments, including the contingent liability of policyholders for all insurance written by county mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remains the property of the insured.

If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee in a sum of not less than Five (\$5.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 17.09. Policyholders' Liabilities**

Policyholders shall be liable for losses of the company only as prescribed in the by-laws of the company and Article 17.06 of this Code, and that only in proportion that the premium or assessments for the insurance of any policy bears to the total amount of

premiums or assessments for all the insurance in the class to which the policy belongs.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 34.]

#### Art. 17.10. Directors Power to Borrow

The Board of Directors of county mutual insurance companies may, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.11. Financial Requirements and Impairment of Surplus

County mutual insurance companies shall maintain at all times unearned premium reserves as provided in Article 6.01 of this Code. The unearned premium reserves and any other type of reserves authorized by the Board of Directors shall be invested in such securities as the reserve funds of other insurance companies doing the same kind of business are by law required to be invested.

There shall be maintained at all times free surplus invested only in items enumerated in Article 2.08 of this Code of:

(a) Not less than \$25,000.00 if the company is organized to write insurance locally in the county of its domicile only; or

(b) Not less than \$50,000.00 if the company is organized to write insurance in the county of its domicile and any adjoining counties only; or

(c) Not less than an amount equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code if such company is organized to write insurance in a county other than the county of its domicile and any adjoining counties within this State.

Each county mutual insurance company shall be subject to the provisions of Section 5 of Article 1.10 and Article 2.20 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 540, ch. 196, § 3; Acts 1955, 54th Leg., p. 413, ch. 117, § 35.]

#### Art. 17.12. Directors; Qualifications; Term

Directors of county mutual insurance companies shall hold their office for one year after their election, and until their successors qualify, unless otherwise provided in their by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than One Thousand (\$1,000.00) Dollars each in a company, shall be eligible to become or remain Directors of the same. When a Director reduces his said insurance below such amount, he shall no longer be qualified to act as such Director.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.13. Charter to Prescribe Power of Directors

The Board of Directors of county mutual insurance companies shall have such discretion, power and authority as their charter shall provide.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.14. Voting by Policyholders

Each policyholder in a county mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.15. Meetings

The meetings of the policyholders of county mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third ( $\frac{1}{3}$ ) of the Directors of the company, or the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.16. Location of Business

A county mutual insurance company possessed of \$25,000.00 or more in surplus as provided in Article 17.11 may write insurance locally in the county of its domicile; and such company possessed of \$50,000.00 or more in surplus as provided in Article 17.11 may write insurance in the county of its domicile and any adjoining counties; and such company possessed of surplus equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code may write insurance anywhere within this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 540, ch. 196, § 4; Acts 1955, 54th Leg., p. 413, ch. 117, § 36.]

#### Art. 17.17. Advancements to the Company

One or more of the policyholders of the company may advance to the company such funds as are necessary for the purposes of its business or to enable it to comply with any requirement of this Chapter, including the surplus requirement of Article 17.11, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners, only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expense, or other bonus, shall be paid in connection with the advance of any such money to

the company, and the amount of all such advances shall be reported in each annual statement.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 540, ch. 196, § 5.]

#### Art. 17.18. Biennial Examination

The Chairman of the Board of Insurance Commissioners shall biennially, or oftener, if he should deem it necessary, in person or by one or more examiners, examine county mutual insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.19. Extension of Charters

Any such company at any time before its charter or any extension thereof expires may have such charter extended for a term of fifty (50) years from the date of expiration. It shall continue under the extended charter to have all the rights, privileges and immunities granted by this chapter. The application for such extension shall be made to the Board, shall show that the application was authorized either by a two-thirds ( $\frac{2}{3}$ ) vote of the directors or by a majority vote at a policyholders' meeting, shall set out in haec verbae the charter to be extended, shall state the time for which it is to be extended, shall be signed and acknowledged by the president and secretary of the company, and shall be accompanied by a fee of Fifty (\$50.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.20. Reciprocal Insurance Contracts

County mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on the mutual or cooperative plan; provided that no county mutual insurance company shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a county mutual insurance company reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such other company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a county mutual insurance company shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.21. Fees

The Board shall charge a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under

this chapter, and for filing each annual statement, it shall charge a filing fee of Twenty (\$20.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.22. Exemption from Insurance Laws

County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except as in this Chapter specifically provided. In addition to such Articles as may be made to apply by other Articles of this Chapter, county mutual insurance companies shall not be exempt from and shall be subject to all the provisions of Article 2.04 and of Article 2.05 and of Article 2.08 and of Article 2.10 and of Article 5.12 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 and of Article 21.28B and of Article 21.49 of this Code, and the provisions of Article 7064 of the Revised Civil Statutes of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 37; Acts 1967, 60th Leg., p. 432, ch. 196, § 2, eff. May 15, 1967; Acts 1973, 63rd Leg., p. 1042, ch. 406, § 2, eff. Aug. 27, 1973.]

Section 1 of Acts 1967, 60th Leg., p. 431, ch. 196, is codified as article 21.28B and section 3 of the act is a severability clause and is set out as a note under article 21.28B.

#### Art. 17.23. By-Laws as Part of Contracts

By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.24. Provision Against Waiver, of By-Laws

Such companies may provide in their by-laws that local chapters and officers and agents elected by them do not have the power to waive any provision of such by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 17.25. County Mutual Insurance Companies

##### Regulation

Sec. 1. County mutual insurance companies operating under the provisions of this Chapter shall be authorized to write insurance against loss or damage from any hazard provided therein or that any other fire or windstorm insurance company operating in Texas may write on property described in Article 17.01 of this Chapter. County mutual insurance companies qualifying to write casualty lines for state wide operation may write all lines of automobile insurance, provided that no such company shall assume a risk on any one hazard greater than five (5%) per cent of its assets, unless such excess shall be promptly reinsured.

##### Companies Subject to Provisions of Article; Requirements

Sec. 2. Any company operating under or subject to the provisions of this chapter excepting those companies which out of the total amount of insurance in force maintain more than sixty (60%) per cent in force on rural property and those companies operating on the assessment-as-needed plan, which shall hereafter be known as "Farm Mutual Insurance Companies," shall become subject to the provi-

sions of this article and shall comply with the following requirements, to-wit:

Definitions

Sec. 3. The following terms when used in this article shall be defined:

"Company" shall refer to and include all types or organizations, corporations, associations, companies or groups subject to the provisions of this article.

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

"Member" shall include policyholders or any persons insured by a company, by whatsoever means the insurance may be effective.

"Policy" shall include any insurance certificate or contract or insurance, certificate of membership or other document through which insurance is effected or evidenced.

"Assessment-as-needed plan" shall refer to companies that other than for nominal reserve purposes assess members only when a loss or losses occur and who use not more than twenty-five (25%) per cent of their gross income for expenses.

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this article.

"Rural Property" as the term is used in this article shall mean any property which has at least five (5) acres of cultivated or grazing land used exclusively with such insured property.

"Paid in full" or "full payment" shall mean the payment of the full amount of loss actually sustained not to exceed the maximum stated in the policy on the happening of the contingency insured against.

Deposit

Sec. 4. Each such company shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest amount assumed on any one risk, or upon a showing or re-insurance acceptable to the Board, the largest amount retained on any one risk after re-insurance, which deposit may be in cash or in convertible securities subject to approval of the Board. Such deposit shall be liable for the payment of all judgments against the company, and subject to a garnishment after final judgment against the company. When such deposit becomes impounded or depleted it shall at once be replenished immediately on demand by the Board, or the company may be regarded as insolvent.

When any company shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Policy Forms Prescribed

Sec. 5. Each county mutual insurance company shall be subject to the provisions of Article 5.06 and of Article 5.35 and of Article 5.36 of this Code. The Board of Insurance Commissioners pursuant to Article 5.35 may in its discretion make, promulgate and establish uniform policies for county mutual insurance companies different from the uniform policies made, promulgated and established for use by companies other than county mutual insurance companies, and shall prescribe the conditions under which such policies may be adopted and used by county mutual insurance companies, and the conditions under which such companies shall adopt and use the same forms and no others as are prescribed for other companies.

File Schedule of Charges

Sec. 6. Such companies shall file with the Board a schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge by whatever name called, to be charged its policyholders or those applying for policies.

Sec. 7. Repealed by Acts 1955, 54th Leg., p. 413, ch. 117, § 39.

Books and Records

Sec. 8. All the records and books of each company shall be kept in the shape, form and manner as to reflect truly and accurately the condition of the company, or the facts essential to its faithful and effective operation. The company shall at once adopt forms or systems which will serve the purpose most effectively.

Agents' License

Sec. 9. Such company shall also file with the Board, and secure license for, each of its agents, or solicitors, upon payment of license fee of Five Dollars (\$5) plus Two Dollars (\$2) for each appointment for each agent or solicitor, under the provisions of Article 21.07 of this Code.

Removal of Officers

Sec. 10. The Board of Insurance Commissioners shall not issue to any company a certificate of authority to do business in Texas, when it shall find after notice and hearing any officer or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order, after notice and hearing, the removal of any officer or director found unworthy of trust, and if such officer or director be not then removed, the Board shall cancel the certificate and proceed to deal with the company as though it were insolvent.

Bond of Officers, Employees

Sec. 11. Such companies shall furnish a bond for the officer responsible for the handling of funds of the members in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand (\$1,000.00) Dollars, said bond to be kept at

all times at least equal to the cash assets on hand, with a maximum of Twenty Thousand (\$20,000.00) Dollars, said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the company, and shall obligate the principal and surety to pay such pecuniary loss as the company shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph each company shall procure a like bond for all other office employees, who may have access to any of its funds, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars. Successive recoveries on any of the bonds provided for in this section may be had on such bonds until same are exhausted.

#### Contesting of Claims

Sec. 12. It shall not be unlawful for a company to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the company is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board, after notice and hearing, shall cancel the certificate of authority of any company found to be operating fraudulently or improperly contesting its claims.

#### Amendment to By-Laws

Sec. 13. By-laws of any such company may be amended by a majority of the members of the company present or represented by proxy when ratified by the board of directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners as being in conformity with this Act. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered must be mailed or delivered personally to all members.

#### Conservatorship or Liquidation

Sec. 14. If, upon an examination or at any other time, and after proper notice and hearing, it appears to the Board of Insurance Commissioners that such company be insolvent, or its condition be, in the opinion of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such company appears to have exceeded its powers or failed to com-

ply with the law, then the Board shall notify the company of its determination and said company shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such company, and all of the property and effects thereof. If the Board is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding liabilities in some solvent company, authorized to transact business in this State, or the Board shall proceed through such conservator, to liquidate such company, or the Board may give notice to the Attorney General as provided under the General Laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the company through a conservator, as provided above, or proceed to liquidate the company, as herein provided, or report it to the Attorney General. When the liabilities of a company are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured or liquidated. Where the Board lends its approval to the merger transfer or consolidation of the membership of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of companies reinsured or liquidated. No merger or transfer shall be approved unless the company assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

#### Violation by Agent

Sec. 15. Should any agent or solicitor for any company be found guilty of making a charge greater than that filed with the Board, or guilty of misrepresentation, he shall have his license cancelled and shall not thereafter be again licensed by said Board. Any agent or solicitor who, upon conviction, is found guilty of overcharge or misrepresentation, shall be punished by a fine of not less than Fifty (\$50.00)

Dollars nor more than Five Hundred (\$500.00) Dollars.

Misappropriation of Funds

Sec. 16. If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this article shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such company, knowing that he is not entitled to receive it, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner; or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Unlawful Diversion of Funds

Sec. 17. If any director, officer, agent, employee, attorney at law, or attorney in fact of any company under this article, shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any company under this article, which has been set apart by law, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Compel Written Reports

Sec. 18. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such company whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the company. If any officer, director, agent, employee, attorney at law or attorney in fact, of any company under this article, shall wilfully make any false affidavit in connection with the requirements of this article, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Violation of Provisions

Sec. 19. If any director, officer, agent, employee or attorney at law or attorney in fact of any company under this article, or any other person, shall violate any of the provisions of this article not specifically set out in Sections 16, 17, and 18 of this article, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Contingent Liability

Sec. 20. The contingent liability of policyholders required under Article 17.06 of this Chapter shall be fixed in the by-laws of each company and shall be \$2.00 for each \$100.00 of property insured in any

policy issued by companies subject to the provisions of this Article. Where any risk is insured against more than one hazard, for the purposes of this Chapter and of this Article, the amount of risk or insurance in any policy shall be the maximum loss that may be sustained at any one time by the company under the policy, regardless of the number of hazards insured against.

Appeals

Sec. 21. It shall be the right and privilege of any individual or any such company to appeal within sixty (60) days from any Board order or ruling to the District Court in the County of Travis, Texas. The trial shall be de novo, and in the event of appeal the orders of the Board shall be suspended pending final judgment of the courts.

Sec. 22. Repealed by Acts 1955, 54th Leg., p. 413, ch. 117, § 31.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1953, 53rd Leg., p. 540, ch. 196, §§ 6, 8; Acts 1955, 54th Leg., p. 517, ch. 153, § 2; Acts 1955, 54th Leg., p. 413, ch. 117, §§ 31, 37A to 40.]

CHAPTER EIGHTEEN. LLOYD'S PLAN

Article

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Art. 18.01. "Underwriters" Defined

Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's plan, by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.01-1. "Underwriters" and "Attorneys"

Individuals, partnerships or associations of individuals, hereby designated "underwriters" are authorized to make any insurance, except life insurance, on

the Lloyd's plan, by executing articles of agreement expressing their purpose so to do, and complying with the requirements set forth in the law authorizing such insurance. Policies of insurance may be executed by an attorney in fact or other representatives, hereby designated "attorney," authorized by and acting for such underwriters under powers of attorney.

[1925 P.C.]

#### Art. 18.02. "Attorneys" Defined

Policies of insurance may be executed by an attorney or by attorneys in fact or other representative, hereby designated "attorney," authorized by and acting for such underwriters under power of attorney. The principal office of such attorneys shall be maintained at such place as may be designated by the underwriters in their articles of agreement; provided that no license shall be issued to any attorney at Lloyd's to bind risks or insurance in Texas, or with citizens of Texas or covering property in Texas, unless their attorneys in fact be residents of this State and maintain their office in this State, except as may be hereinafter specifically provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.03. Application for License

The attorney shall file with the Board of Insurance Commissioners a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

(b) The location of the principal office.

(c) The kinds of insurance to be effected, which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.

2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision liability and tornado insurance.

3. Liability insurance.

4. Marine insurance.

5. Accident and health insurance.

6. Burglary and plate glass insurance.

7. Fidelity and surety bonds insurance.

8. Any other kinds of insurance not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

(d) A copy of each form of policy or contract by which such insurance is to be effected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the

articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, whose number shall not be less than ten.

(g) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorneys in fact, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to such Board delegating the attorney's powers in this respect to such Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.03-1. Application for License

The attorney for a Lloyd's shall file with the Commissioner of Insurance a verified application for license setting forth the data and information required by law, and upon complying with the law such Commissioner shall issue to any attorney applying therefor a license specifying the kind or kinds of insurance which he is authorized to make, which shall continue in force until surrendered by the attorney or revoked or suspended by such Commissioner as authorized by law.

[1925 P.C.]

#### Art. 18.04. License

Such underwriters and their attorney shall be subject to the provisions of Article 2.01 and Article 2.04 of this Code, except that:

1. The Articles of Agreement shall be in lieu of Articles of Incorporation; and

2. The aggregate of guaranty fund and free surplus shall constitute capital structure within the meaning of Article 2.01.

The attorney for such underwriters shall pay a fee of \$10.00 to the Board of Insurance Commissioners upon the filing of the application for license.

Upon determination by the Board of Insurance Commissioners that such underwriters and their attorneys have fully complied with the law the Board shall issue a Certificate of Authority as provided by Article 1.14 of this code.

In the event, however, of first applications for licenses on behalf of newly formed Lloyds, or in the event of proposed amendment to the text of the Articles of Agreement of currently licensed Lloyds, the Board shall not issue certificates of authority until receipt of certification by the Attorney General that such underwriters and their attorneys have fully complied with the law.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 41.]

**Art. 18.05. Assets**

No attorney shall be licensed for the Underwriters at a Lloyd's until and unless the provisions of Article 2.01 are fully complied with and until and unless the net assets contributed to the attorney, a committee of underwriters, trustee or other officers as provided for in the Articles of Agreement shall constitute a guaranty fund and surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. The required net assets shall be invested following the licensing as provided in Article 2.08 as to minimum guaranty fund and surplus required, and as provided in Article 2.10 as to other funds.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 42.]

**Art. 18.06. Limitation of Business**

The underwriters at a Lloyd's shall not assume nor write insurance obligations in Texas nor for citizens of Texas, nor covering property located in Texas which produce a net premium income in excess of ten times the net assets of such underwriters, and if at any time the liabilities assumed upon such insurance shall produce a net premium income greater than ten times such net assets, then no further insurance obligation shall be assumed until the net assets have been increased so as to admit of additional insurance obligations which will produce a premium income not greater than ten times such net assets; provided that when the net assets at a Lloyd's shall equal the sum of money which will be required of a stock insurance company doing the same character of business in Texas, then his limitation upon the volume of business to be written shall not apply further; provided further that if in the judgment and discretion of the Board of Insurance Commissioners such underwriters at a Lloyd's shall have effected reinsurance, or other contracts, with responsible and solvent insurance carriers reducing the net lines at risk carried by such underwriters at a Lloyd's so that their operations are safe and their solvency not in danger, then such Board may renew or extend the licenses of such underwriters, irrespective of this limitation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.07. Impairment of Guaranty Fund and Surplus**

Lloyd's companies shall be subject to the provisions of Section 5 of Article 1.10 of this Code. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 43.]

**Art. 18.08. Reserves**

Underwriters at a Lloyd's are required to compute reserve liabilities for all outstanding business and for all incurred losses upon the same basis required for stock insurance companies doing the same classes and character of business in Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.09. Investments**

The assets of Underwriters at a Lloyd's to the extent of the minimum required under the provisions of Article 2.02 and of Article 18.05 of this Chapter shall be cash or shall be invested in such securities as are eligible for investment of the capital stock and minimum surplus of stock insurance companies transacting the same sort of business, and the other assets of underwriters shall be invested, if at all, in such property or securities as the funds of the stock insurance companies doing the same sort of business may be invested in, except that only the surplus, in excess of the required minimum guaranty fund and surplus of a Lloyd's may be invested in the securities eligible for investment of surplus in excess of capital and minimum surplus of such similar stock insurance companies. Lloyd's organized prior to August 10, 1943, and doing business under Certificate of Authority from the Board of Insurance Commissioners shall not be required to conform to this Article except as to securities thereafter acquired, whether in substitution for securities then held or from additional, successor or substituted underwriters. Underwriters at a Lloyd's shall be permitted to purchase, hold or convey real estate in accordance with the provisions and subject to the limitations of Article 6.08 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 44.]

**Art. 18.10. Control of Net Assets**

The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of this chapter shall be submitted to and subjected to the joint control of the attorney in fact for such underwriters, and the Board of Insurance Commissioners, in some manner satisfactory to the Board, so that the same may not be withdrawn or diverted, or expended, except with the approval of the Board and the purposes provided for in this chapter. Such underwriters, however, shall be entitled to the interest or income accruing from such property or securities as may be placed under the joint control of such attorney in fact and the Board as and when the same is payable. Provided, however, in lieu of such joint control any attorney in fact at a Lloyd's now doing business in this State may give bond in the sum of Twenty-five Thousand (\$25,000.00) Dollars for the safe keeping of assets, to be released only on approval of the Board of Insurance Commissioners, and in such form and with corporate surety as shall be approved by the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.11. Examination of Affairs**

All of the provisions of Article 1.15 and of Article 1.16 relative to examination of companies shall apply to companies organized under this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 45.]

**Art. 18.11-1. Examination of Books and Affairs**

The Commissioner of Insurance may make examinations of the books and affairs of any attorney for underwriters at a Lloyd's, and the attorney and his deputies shall facilitate such examination and furnish all information which such Commissioner may reasonably demand.

[1925 P.C.]

**Art. 18.12. Annual Reports**

The attorneys for such underwriters shall annually file with the Board of Insurance Commissioners a verified report of the business done by the attorney for such underwriters during the previous year, and of the condition of its affairs, together with such other information as the Board of Insurance Commissioners may demand; such report shall be filed upon blanks prepared by the Board and shall cover the report of all the business of such underwriters, wherever the same may be conducted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.13. Limitation of Liability**

An underwriter at a Lloyd's may limit his total liability by contract with the persons insured to the proportionate part of the loss represented by the ratio which his subscription paid in, in cash and/or securities such as allowed by this chapter bears to the total guaranty fund contributed by the several underwriters and his total liability on all risks may be limited to the amount of his subscription as expressed in his power of attorney and agreement with the attorney in fact, provided at least half of the subscription of each underwriter must be paid or contributed to the guaranty fund in cash and/or admissible securities. Each underwriter shall be responsible solely for his own liability as fixed in the contract of insurance and not be liable as a partner.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.14. Liability of Substitutes**

Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Board; and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.15. Division of Profits**

No profits shall accrue to an underwriter, except upon the basis of his actual investment in cash or convertible securities, disregarding any obligation or subscription to pay in additional cash or securities at a later date.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.16. Assuming Risk**

No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-tenth of the amount of the net assets of the underwriters as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.16-1. Assuming Undue Risk**

No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-fifth of the amount of the net assets of the underwriters as defined by law and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured.

[1925 P.C.]

**Art. 18.17. Action on Policy**

Action on any policy or contracts of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorneys and the underwriters or any of them. In such action, summons and process shall be served on either the Chairman of the Board of Insurance Commissioners or on the attorney in fact and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance on which the action is brought.

Such summons or other process shall be served in duplicate, and the Chairman of the Board shall forthwith by registered mail send one copy thereof to the attorney for the underwriters at the principal office designated in the application for license or latest amendments thereof. The party commencing any action against the underwriters at a Lloyd's and securing service of process in this manner shall at the time of such service pay to such Board for the use of the department a fee of Two (\$2.00) Dollars, which he shall be entitled to collect as taxable costs in the action if he shall prevail.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 18.18. Winding Up Affairs**

Whenever it shall appear to the Board of Insurance Commissioners that the minimum assets provided for in Article 18.05 have become impaired, the Board shall immediately give notice to the attorney in fact for such Lloyd's to appear and show cause why the license of such attorney shall not be revoked, and if within thirty (30) days from the giving of such notice the impairment or insolvency shall not be made good by such underwriters, or their attorney, such license shall immediately be cancelled. If

such attorney or other person shall make any advancement to make good such impairment, the claim for such advancement against the assets of such underwriters shall be deferred to the claims for losses under policies or contracts of insurance. If such impairment is not made good within the time prescribed, then the Board shall proceed to take charge of the assets of such underwriters, and to effect a reinsurance of all business outstanding in Texas or covering property located in Texas, and for that purpose, the Board shall have the right to use the net assets, and to make provision for the payment of outstanding claims and losses. In case reinsurance cannot be effected by the said Board, then the affairs of such underwriters at Lloyd's shall be wound up through receivership proceedings instituted by the Attorney General of Texas at the request of the Board.

In case underwriters at a Lloyd's shall desire to withdraw from the insurance business, they may be permitted to do so, if and when they shall satisfy the Board that adequate provision has been made, through reinsurance or otherwise, for the payment of all unadjusted losses, and for the reinsurance of all outstanding risks in favor of citizens of Texas, or covering property in Texas, and thereupon any bond of the attorney in fact shall be released, and said Board shall release to such underwriters the net assets over which it may have been given joint control.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.19. Foreign Lloyd's

In case underwriters at a Lloyd's who are non-residents of Texas, or who maintain their principal office outside of Texas, apply for a permit to do business in Texas, such permit shall not be granted unless such underwriters have and maintain net assets in Texas which are subject to the joint control of their attorney in fact and the Board of Insurance Commissioners of this State sufficient to meet the minimum requirements of this chapter relative to the amount of net assets which underwriters at Lloyd's must have; or unless they submit to and file with the Board a bond executed by such corporate sureties as the Board may require, which corporate sureties must be licensed to do guaranty, fidelity and surety business in Texas, in a principal amount which would be required for net assets of underwriters at Lloyd's under foregoing provisions of this chapter, which said bond shall be payable to the Board of Insurance Commissioners, and which shall be conditioned for the payment of all claims arising upon contracts issued in Texas, or issued to residents and citizens of Texas, or covering property located in Texas, and which bond shall be held by the Board for the benefit of all persons having valid claims arising upon such contracts. It shall also provide that in the event the underwriters shall become insolvent or cease to transact business in this State at any time when there are outstanding policies of insurance in favor of citizens of this State, or upon

property in this State, the Board shall have power, after having given ten (10) days' notice to the attorneys for such underwriters, or any receiver in charge of its property and affairs, to contract with any other insurance carrier transacting business in this State for the assumption and reinsurance by it of all insurance risks outstanding in this State of such underwriters, which contract shall also provide for the assumption by such reinsurance carrier of all outstanding and unsatisfied lawful claims then outstanding against such underwriters. In the event of the Board making any such contract, and if the same shall be approved as reasonable by the Attorney General, the reinsuring carrier shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Such bond shall also bind any additional or substitute underwriters at such Lloyd's. If any underwriters desiring to do so, at their option, in lieu of giving the bond authorized by this article, shall submit admissible securities subject to the joint control of its attorney in fact and the Board of Insurance Commissioners, such deposits of securities shall be deemed to have been made upon such terms and conditions as provided by such bond.

If there shall be any recovery upon the bond or from the deposit hereinabove provided for, then the Board shall immediately demand additional security so as to bring the amount of the bonds up to the minimum sum required hereunder, which additional bond must be posted within thirty (30) days from the date of such demand. Provided, there may be successive recoveries on said bond until the principal sum thereof is exhausted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.20. Provisions Applicable to Foreign Lloyd's

All of the provisions of this chapter are applicable to underwriters at a Lloyd's who are non-residents of Texas, or who maintain their principal office outside of Texas, in the same manner that they are applicable to underwriters of a Lloyd's who are residents of Texas and who maintain their principal office in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.21. Reinsurance

The provisions of this Chapter shall not prevent any Texas Lloyd's from reinsuring its excess lines with a solvent foreign Lloyd's, acceptable to the Board of Insurance Commissioners, which has no license to do business in Texas nor from reinsuring any business from such foreign Lloyd's.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.22. Revocation and Suspension of License

If any attorney in fact or underwriters at Lloyd's shall violate any of the provisions of this chapter or any of the other laws of the State of Texas, which are applicable to them, the license of such attorney

shall be revoked and the right to do business in Texas shall be cancelled.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 18.22-1. Penalty for Violation of Act

Any person, who, as principal, attorney, agent, broker, or other representative, shall engage in the business of making insurance on the Lloyd's plan, as defined in this chapter and by the Revised Statutes<sup>1</sup> of this State, without complying with the requirements of such law governing such business, or who shall violate any provision of the four preceding articles,<sup>2</sup> shall be fined not exceeding five hundred dollars.

[1925 P.C.]

<sup>1</sup> Now, this chapter.

<sup>2</sup> Articles 18.01-1, 18.03-1, 18.11-1, 18.16-1.

#### Art. 18.23. Exemption from Insurance Laws with Limitations

Underwriters at a Lloyd's shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless it is specifically so provided in such other law that same shall be applicable. In addition to such Articles as may be made to apply by other Articles of this Chapter, underwriters at a Lloyds' shall not be exempt from and shall be subject to all of the provisions of Article 2.20 and of Article 5.35 and of Article 5.36 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 of this Code. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 46.]

#### Art. 18.24. Promotion of Lloyd's

(1) No person or persons, firm or corporation, shall be instrumental in the origination of a Lloyd's business if in such organization any money or property shall be paid over to such person, persons, firm or corporation, or their agent or representative, by way of commission or other compensation for procuring underwriters or guaranty fund for such Lloyd's, unless such person, persons, firm or corporation shall in advance make application to the Board of Insurance Commissioners and shall receive a permit from such Board to organize such Lloyd's and charge a commission in connection with such organization.

(2) In no event shall more than ten (10%) per cent of the total amount of the subscription to such an enterprise by any underwriter be paid to any person by way of commission for the sale of "units" or interest in such Lloyd's business or in the procuring of underwriters therefor.

(3) This article shall not apply to the organization or the enlargement of a Lloyd's in which no promotion expense is deducted from the contributions made by the underwriters, and no commission of any sort is paid for the procuring of underwriters or subscriptions to the guaranty fund of such business.

(4) This article shall apply to the continued organization or the continued extension of any Lloyd's business which has heretofore been licensed by the

Insurance Department of this State, if in such further extension of such business any commission is to be paid, but such permit shall not be refused because of the contemplated size or amount of the guaranty fund of such Lloyd's.

(5) After such permission shall have been granted for the organization of enlargements of a Lloyd's, no securities shall be accepted as contributions to the guaranty fund of such Lloyd's, unless such securities shall have been approved in advance by the Board of Insurance Commissioners as complying with this law relative to the investment of the funds of such organizations.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### CHAPTER NINETEEN. RECIPROCAL EXCHANGES

#### Article

- 19.01. May Exchange Contracts.
- 19.02. Attorney for Subscribers.
- 19.03. Declaration of Subscribers.
- 19.04. Service of Process.
- 19.05. Statement of Indemnity.
- 19.06. Financial Requirements.
- 19.07. May Advance Money.
- 19.08. Financial Report.
- 19.09. Any Corporation May Exchange.
- 19.10. Certificate of Authority.
- 19.10-1. Indemnity Contracts; Penalty.
- 19.11. Fees and Taxes.
- 19.12. Exemption from Insurance Laws with Limitations.

#### Art. 19.01. May Exchange Contracts

Individuals, partnerships and corporations of this State hereby designated subscribers are hereby authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 19.02. Attorney for Subscribers

Such contracts may be executed by a duly appointed attorney in fact duly authorized and acting for such subscribers. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney.

Any person, firm or corporation may act as such attorney in fact, provided such attorney in fact shall make a good and sufficient fidelity bond acceptable to the Board of Insurance Commissioners of Texas and payable to the subscribers at the exchange, or, in lieu thereof, payable to the said Board of Insurance Commissioners, such bond to be in the sum of Twenty-five Thousand (\$25,000.00) Dollars in the case of an individual or firm, and Fifty Thousand (\$50,000.00) Dollars in the case of a corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the exchange shall sustain of money or property by an act or acts of fraud,

dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on the part of the said attorney in fact directly or through connivance with others, and in the event of any violation of the conditions of said bond, the insurance supervisory authority of any state in which the attorney in fact is authorized to transact the business of the exchange may bring suit to enforce the penalty of the bond on behalf of the subscribers; provided, that a deposit with the proper lawful authority of the home state of such exchange of cash or securities of the kind in which general casualty companies may invest their funds, in like amount, conditioned, approved and payable in like manner, may be used in lieu of such bond.

A corporation may be organized in Texas to act as attorney-in-fact for a reciprocal or inter-insurance exchange. The general laws for incorporation shall supplement the provisions of this Act to the extent that they are not inconsistent with the provisions hereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 355, ch. 172, § 1.]

#### Art. 19.03. Declaration of Subscribers

Such subscribers, so contracting among themselves, shall, through their attorney in fact file with the Board of Insurance Commissioners a declaration verified by the oath of such attorney in fact setting forth:

1. The name or title of the office at which subscribers propose to exchange such indemnity contracts. Said name or title shall contain the word "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurers," and shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of said Board of Insurance Commissioners is calculated to confuse or deceive. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or inter-insurance exchanges;

2. The kind or kinds of insurance to be effected or exchanged, provided that same shall not include life insurance;

3. A copy of the form of power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged, which form shall be subject to approval by the Board of Insurance Commissioners of Texas; provided, however, that except as to matters concerning which specific provision is made in this Chapter, nothing herein contained shall be so construed as to permit the said Board to require the filing or use of uniform forms of such instruments. Such subscribers at such exchange may provide by agreement that the premium or premium deposit specified in the policy contract on all forms of insurance except life

shall constitute their entire liability through the exchange if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. If a Certificate of Authority is issued as provided by Article 19.10 and Article 2.20, the power of attorney or other authority executed by the subscribers at any such exchange shall provide that such subscribers at such exchange shall be liable, in addition to the premium or premium deposit specified in the policy contract, to a contingent liability equal in amount to one (1) additional annual premium or premium deposit. Such last mentioned provision may be eliminated if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. When any such subscribers and their attorney in fact shall be authorized to issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums.

If up to the time of the effectiveness of this Act such subscribers and their attorney in fact were authorized to write non-assessable policies in Texas under the provisions of this Code, such subscribers and their attorney in fact shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act;

4. The location of the office or offices from which such contracts or agreements are to be issued;

5. Such other information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05.

Such subscribers and their attorney in fact shall be subject to the provisions of Article 2.01 and of Article 2.04 of this Code, except that:

- (a) The declaration of subscribers shall be in lieu of Articles of Incorporation; and

- (b) Free surplus shall constitute capital structure within the meaning of Article 2.01.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 47.]

#### Art. 19.04. Service of Process

Concurrently with the filing of such declaration, the attorney shall file with the Board of Insurance Commissioners an instrument in writing executed by him for said subscribers conditioned that upon the issuance of certificates of authority as hereinafter provided, service of process may be had upon the Chairman of such Board in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney.

Three copies of such process shall be served and said Chairman of such Board shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. It is provided, however, that in lieu of the method hereinabove provided, service of process may be had upon such attorney in fact in all suits, which service shall likewise be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. If said attorney in fact be a corporation, either foreign or domestic, or joint stock company, or association, service of process thereon may be had in any manner provided by general law for service of process on corporations, joint stock companies, or associations.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 19.05. Statement of Indemnity

Such attorney shall file with the Board of Insurance Commissioners a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with such Board a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand (100,000) subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than ten (10%) per cent of the net worth of such subscriber.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 19.06. Financial Requirements

There shall be maintained at all times a surplus over and above all liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business.

There shall be maintained at all times such reserves as are required, or which, by the laws of this State or by the lawful rules and regulations of the Board of Insurance Commissioners, hereafter may be required, to be maintained by stock insurance companies transacting the same kind or kinds of insurance business.

The required assets of such exchanges shall be maintained as to minimum surplus requirements as provided in Article 2.08 of this Code, and as to other funds, as provided in Article 2.10 of this Code.

If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the State Treasurer of Texas, money, bonds, or other securities in an amount not less than \$50,000.00. Such securities as described in Article 2.10 of this Code shall be approved by the Board of Insurance Commissioners, and this amount shall be kept intact at all times. Any foreign exchange writing fidelity and surety

bonds in this State shall file with the Board of Insurance Commissioners evidence, satisfactory to the Board of Insurance Commissioners, that it has on deposit with the State Treasurer or other proper officials of its home state, or in escrow under his supervision and control in some reliable bank or trust company, \$100,000.00 or more, in money, bonds or other securities as described in Article 2.10 of this Code for the protection of its policyholders; provided further, that if said bonds and securities herein referred to are not acceptable to and approved by the Board of Insurance Commissioners of Texas, said Board shall have the right and authority to deny the attorney in fact a Certificate of Authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 48.]

#### Art. 19.07. May Advance Money

Any attorney in fact of such exchange may advance to such exchange any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirement of law, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners (which approval shall not be arbitrarily refused), only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the exchange or any of its assets. No commission or promotion expenses, or other bonus, shall be paid in connection with the advance of any such money to the exchange, and the amount of all such advances shall be reported in each annual statement.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 19.08. Financial Report

Such attorney shall make an annual report to the Board of Insurance Commissioners for each calendar year, which report shall be made on or before March 1st, for the previous calendar year ending December 31, showing the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. Such attorney shall not be required to furnish the name and address of any subscriber. The business affairs and assets of said reciprocal or interinsurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by such Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 19.09. Any Corporation May Exchange

Any corporation, public, private or municipal, now or hereafter organized under the laws of this State, shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance con-

tracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purpose for which such corporations are organized and as much granted as the rights and powers expressly conferred.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 19.10. Certificate of Authority

Such attorney-in-fact by whom or through whom are issued any policies of or contracts of indemnity of the character referred to herein shall procure from the State Board of Insurance of Texas a Certificate of Authority as provided in Article 1.14, and the provisions of Article 2.20 shall be applicable as well as to renewal Certificates of Authority.

A Certificate of Authority issued as provided in this Article, shall fully authorize the named person, firm or corporation to exercise all of the powers and perform all of the duties of such attorney-in-fact; provided, that any corporation acting as the attorney-in-fact for a reciprocal or inter-insurance exchange which is required to procure a Certificate of Authority from the State Board of Insurance of Texas shall not be deemed to be doing business in this state within the meaning of any laws applying to foreign corporations.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 49; Acts 1959, 56th Leg., p. 355, ch. 172, § 2.]

#### Art. 19.10-1. Indemnity Contracts; Penalty

Any attorney in fact duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts, who shall, except for the purpose of applying for certificate of authority from the Commissioner of Insurance as provided for by such law, exchange any contract of indemnity of the kind and character specified in such law, or shall directly or indirectly solicit or negotiate any application for same without first complying with the law governing such contracts, shall be fined not less than one hundred nor more than one thousand dollars. [1925 P.C.]

#### Art. 19.11. Fees and Taxes

The schedule of fees set out in Article 4.07 of this Code, so far as pertinent, shall apply to reciprocal exchanges and their attorneys in fact. Said exchanges shall be subject to the provisions of Article 7064 and of Article 7064a of the Revised Civil Statutes of Texas and of Article 4.02 and of Article 4.04 and of Article 5.12 and of Article 5.24 and of Article 5.49 and of Article 5.68 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 50.]

#### Art. 19.12. Exemption from Insurance Laws with Limitations

Reciprocal or inter-insurance exchanges shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically

provided, or unless reciprocal or inter-insurance exchanges are specifically mentioned in such other laws. In addition to such Articles as may be made to apply by other Articles of this Code, reciprocal or inter-insurance exchanges shall not be exempt from and shall be subject to all of the provisions of Section 5 of Article 1.10 and of Article 1.15 and of Article 1.16 and of Article 5.35 and of Article 5.36 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 6.12 and of Article 8.07 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 51; Acts 1971, 62nd Leg., p. 2942, ch. 973, § 1, eff. June 15, 1971.]

### CHAPTER TWENTY. GROUP HOSPITAL SERVICE

#### Article

- 20.01. Nonprofit Corporations for Group Hospital Service; Incorporation.
- 20.02. Supervision; Requirements.
- 20.03. Deposit.
- 20.04. Officers'; Employees' Bond.
- 20.05. Payment of Claims; Cancellation of Certificate.
- 20.06. Dissolution.
- 20.07. Method of Dissolution.
- 20.08. Fees.
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- 20.10. Corporations Nonprofit; Salaries; Funds; Investments.
- 20.11. Authority of Corporation to Contract.
- 20.12. Prohibition Against Contracting for Medical Services.
- 20.13. Personnel of Directors.
- 20.14. Supervision.
- 20.15. Approval of Rates.
- 20.16. Membership Certificates.
- 20.17. Bond of Treasurer.
- 20.18. Finance Procedure.
- 20.19. Participation Contracts; Re-insurance; Agreements.
- 20.20. Expenses of Directors; Meetings.
- 20.21. Examination of Books and Records.

#### Art. 20.01. Nonprofit Corporations for Group Hospital Service; Incorporation

Any seven (7) or more persons, a majority of whom are superintendents of hospitals or physicians or surgeons licensed by the State Board of Medical Examiners, upon application to the Secretary of State of the State of Texas for a corporate charter may be incorporated for the purpose of establishing, maintaining and operating a nonprofit hospital service plan, whereby hospital care may be provided by said corporation through an established hospital or hospitals, and sanitariums with which it has contracted for such care, as is hereinafter defined.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 20.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and shall be subject to the following requirements:

- (a) Upon incorporation, and as a condition thereof, they shall have collected in advance from at least five hundred (500) applicants the application fee and at least one (1) month's

payment for insurance. It shall be a condition of continued operation that a minimum membership of five hundred (500) be maintained;

(b) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the Board of Insurance Commissioners not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the Board;

(c) They shall maintain solvency in both funds, i. e., the admitted assets of each fund shall exceed the liability of each fund, and it shall be a condition of licensing by the Board that such solvency be maintained;

(d) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the Board shall issue it a certificate authorizing it to transact business for a period of not more than fifteen (15) months, and not extending beyond May 31, next following the date of said certificate;

(e) All certificate forms and application forms shall be approved by the Board of Insurance Commissioners and all rate schedules shall be filed with the Board before they may be used by the corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

*Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.*

#### Art. 20.03. Deposit

Each such corporation shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to One Hundred (\$100.00) Dollars for each one thousand (1,000) of its members and fractional part of such number, provided that the maximum deposit shall be Two Thousand (\$2,000.00) Dollars. The deposit shall be liable for the payment of all judgments against the corporation and subject to garnishment after final judgment against the corporation. When such deposit becomes impounded or impaired, it shall at once be replenished by the corporation; and if not replenished immediately on demand by the Board, the corporation may be regarded as insolvent and dealt with accordingly.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 20.04. Officers'; Employees' Bond

Each such corporation shall furnish a bond for the officer or employee responsible for the handling of the funds, the bond to be in some Surety company licensed by the Board of Insurance Commissioners to do business in Texas, and the bond to be in a minimum amount of One Thousand (\$1,000.00) Dollars, to be at all times at least equal to the assets on hand, with a maximum bond of Twenty-five Thousand (\$25,000.00) Dollars. In addition, it shall furnish on all employees who have access to any of its

funds, separate bonds, or a blanket bond, in amounts to be reasonably fixed by the Board, with a minimum of Five Hundred (\$500.00) Dollars, and a maximum of Ten Thousand (\$10,000.00) Dollars. All such bonds shall be made payable to the Board of Insurance Commissioners for the use and benefit of the corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 20.05. Payment of Claims; Cancellation of Certificate

All claims under certificates shall be paid in full within sixty (60) days after the services called for by the particular certificate have been rendered, and after receipt of due proof of claim. Written notice of claim given to the corporation shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the claimant within fifteen (15) days such forms as are usually furnished by it for filing such claims. The Board of Insurance Commissioners shall cancel the certificate of authority of any corporation found to be operating fraudulently or improperly contesting its claims, or which fails to pay its valid claims in accordance with the provisions of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 20.06. Dissolution

Any dissolution or liquidation of any such corporation subject to the provisions of this chapter shall be under the supervision of the Board of Insurance Commissioners. In case of dissolution of any group formed under the provisions of this chapter, certificate holders of such group shall be given priority over all other claims except cost of liquidation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 20.07. Method of Dissolution

Any such corporation operating under this chapter may be dissolved at any time by a vote of its Board of Directors, and after such action has been approved by the Board of Insurance Commissioners. In the case of such voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers, and when such liquidation has been completed and a final statement, in acceptable form, filed with the Board of Insurance Commissioners, the facts shall be certified to the Attorney General who shall bring suit in a District Court in Travis County to declare the charter of the corporation cancelled. In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, upon a determination of such condition, and after due notice and hearing, the affairs of such corporation shall be disposed of by a liquidator appointed by and under the supervision of the Board of Insurance Commissioners, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.08. Fees**

The Board of Insurance Commissioners shall charge a fee of Twenty (\$20.00) Dollars for filing the annual statement of each corporation operating under this chapter, and a fee of One (\$1.00) Dollar for the issuance of each certificate of authority to such corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.09. Applications**

Any such corporation when organized shall be authorized to accept applicants, who may become members of said corporations furnishing group hospital service under a contract, which shall entitle each member to such hospital care for such period of time as is provided therein; and that such corporations shall be governed by this chapter and shall not be construed as being engaged in the business of insurance under the laws of this State. Such corporations organized and operated under the provisions of this chapter shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this chapter, except as may be otherwise required in this chapter, and the provisions of the other chapters of this code are hereby declared inapplicable to corporations organized and/or operated under this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.10. Corporations Nonprofit; Salaries; Funds; Investments**

Such corporations shall be governed and conducted as nonprofit organizations for the purpose of offering and furnishing hospital services to their members, in consideration of the payment by such members of a definite sum for hospital care and services so contracted to be furnished; and provided that no paid officer or employee of said corporations shall receive more than Twelve Thousand, Five Hundred Dollars (\$12,500.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. Provided, further, that there shall be two funds, namely: the Claim Fund and the Expense Fund. The Claim Fund shall be composed of at least eighty percent (80%) of the regular payments by members, except the application fees. The Expense Fund shall be composed of not more than twenty percent (20%) of regular payments by members, and the application fees. The application fees shall be paid by applicants prior to becoming members, for the privilege of becoming members, and shall not apply as a part of the cost of receiving benefits under policies issued. Claim Fund investments may include only such as are legal investments for the reserve funds of life, health and accident insurance companies; and Expense Fund investments may include only such as are legal investments for the capital, surplus and contingency funds of capital stock life insurance companies. The

net income from the investments shall accrue to the funds, respectively, from which the investments were made. The Claim Fund shall be disbursed only for the payment of valid claims and to the extent approved by the Board of Insurance Commissioners for the cost of settling contested claims, and necessary expenses directly incurred on investments of the Claim Fund.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 331, ch. 163, § 1.]

**Art. 20.11. Authority of Corporation to Contract**

Such corporations shall have authority to contract with hospitals charging for services rendered, in such manner as to assure to each person holding a contract of said corporation the furnishing of such hospital care as may be agreed upon in the contract between said corporation and said member, with the right to said corporation to limit in said contract the types of disease for which it shall furnish hospital care.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.12. Prohibition Against Contracting for Medical Services**

Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, but said corporation shall confine its activities to rendering hospital service only through such type of hospitals with whom it has contracts, without restricting the right of the patient to obtain the services of any licensed doctor of medicine. In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 331, ch. 163, § 2.]

**Art. 20.13. Personnel of Directors**

At least a majority of the directors of such corporation must be at all times directors, superintendents or trustees of hospitals, which have contracted or may contract with such corporation to render its subscribers hospital service.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.14. Supervision**

Every such corporation shall, before accepting applications for membership in said nonprofit hospital service plan, submit to the Board of Insurance Commissioners a plan of operation, together with a schedule of its dues to be charged and the amount of hospital service contracted to be rendered; which plan shall first be approved by the Board as fair and reasonable before said corporation shall engage in business.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.15. Approval of Rates**

The Board of Insurance Commissioners shall likewise approve the rates of payment to be made by said corporations to hospitals for the rendering of hospital care to the members of said corporation as being reasonable and just. Said hospitals shall guarantee the benefits of the certificates of membership issued by the corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.16. Membership Certificates**

Every such corporation shall issue to its members certificates of membership setting forth the benefits to which they are or may become entitled. Such certificates, and the contracts made between the corporation and the member's employer or group representative shall be in form approved by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 331, ch. 163, § 3.]

**Art. 20.17. Bond of Treasurer**

The treasurer of such corporation shall be required to give a fidelity bond with corporation surety in such sum as may be determined by the officers of said corporation for the faithful handling of the funds of said corporation and all funds collected from members or subscribers of said corporation shall be deposited to the account of said corporation in a bank, which is a State depository.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.18. Finance Procedure**

Such corporation shall not pay any of the funds collected from members or subscribers to any hospital until after said hospitals shall have rendered the necessary hospital care to such subscriber or member.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.19. Participation Contracts; Re-insurance; Agreements**

Such corporations shall be authorized to contract with other organizations similar in character for joint participation through mutualization contract agreements, re-insurance treaties or otherwise and cede or accept risks from any insurance company or insurer upon the whole or any part of any risks, provided that such contract forms, documents, treaties or agreement forms are filed with and approved by the State Board of Insurance for such purposes.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 331, ch. 163, § 4.]

**Art. 20.20. Expenses of Directors; Meetings**

No director of any corporation created under this chapter shall receive any salary, wages or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of said corporation. Provided, however, that the directors may not have more than

one (1) meeting per month, which meeting shall not last more than five (5) days.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 20.21. Examination of Books and Records**

Every such corporation shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the Board of Insurance Commissioners annually, the expense of such examination to be borne by said corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**CHAPTER TWENTY-ONE. GENERAL PROVISIONS****SUBCHAPTER A. AGENTS AND AGENTS' LICENSES**

## Article

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- 21.02. Who Are Agents.
  - 21.02-1. Who Are Agents.
  - 21.02-2. Exceptions.
  - 21.02-3. Penalty for Unlawfully Acting as Agent.
- 21.03. Assessment of Taxes.
- 21.04. Solicitor Deemed Company's Agents.
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**SUBCHAPTER A. AGENTS AND AGENTS' LICENSES**

**Art. 21.01. Certificate of Authority**

It shall not be lawful for any person to act within this State, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorpo-

rated in this State, or out of it, without first procuring a certificate of authority from the Board.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.02. Who Are Agents**

Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust, or aid in adjusting, any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by, any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter. The provisions of this subchapter shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of Two Hundred (\$200.00) Dollars for the year in which the adjustment is made, nor to practicing attorneys at law in the State of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. Any person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the requirements of the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.02-1. Who Are Agents**

Whoever solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State, or foreign government, or who takes or transmits other than for himself, any application for insurance, or any policy of insurance, to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive or collect or transmit any premium of insurance, or make or forward any diagram of any building or do any

other act in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done or the risk is taken, as far as relates to all the requirements and penalties herein set forth.  
[1925 P.C.]

#### Art. 21.02-2. Exceptions

The preceding article shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and the assured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters, nor to attorneys at law in the State acting in the regular transaction of their business as such, and who are not local agents nor acting as adjusters for any insurance company.  
[1925 P.C.]

#### Art. 21.02-3. Penalty for Unlawfully Acting as Agent

Whoever shall do or perform any of the acts or things mentioned in the first article of this chapter for any insurance company referred to in said article without such company having first complied with the requirements of the laws of this State, shall be fined not less than five hundred nor more than one thousand dollars.  
[1925 P.C.]

#### Art. 21.03. Assessment of Taxes

Whenever any person shall do or perform within this State any of the acts mentioned in the preceding article for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this State and shall be subject to the same taxes, state, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this State by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.04. Solicitor Deemed Company's Agents

Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.05. Who May Not Be Agents

No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State. No life insurance company shall be granted a certificate of authority to transact business in this State which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, any percentage or portion of the premium or other income of such life insurance company for any period. No person shall be granted a certificate of authority as the agent of any life insurance company who enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.06. Certificates for Agents

Each such foreign insurance company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this State, and such officer or agent shall promptly notify the Board in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the Board shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the Board for cause or cancelled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.07. Licensing of Agents

##### Applicability of Act

Sec. 1. No person shall act as an agent of any (i) local mutual aid association, (ii) local mutual burial association, (iii) statewide mutual assessment corporation, (iv) stipulated premium company, (v) county mutual insurance company, (vi) casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, on the date that this Act shall become effective, unless he shall have first procured a license from the State Board of Insurance as in this Article 21.07, as amended hereby, is provided, and no such insurance carrier shall appoint any

person to act as its agent unless such person shall have obtained a license under the provisions of this Article, and no such person who obtains a license shall engage in business as an agent until he shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this Article 21.07 and authorized to do business in the State of Texas. Any person desiring to act as an agent of any insurance carrier licensed to do business in the State of Texas and writing health and accident insurance may obtain a separate license as an agent to write health and accident insurance provided such person complies with the provisions of this Article and has been appointed to act as an agent by some duly authorized insurance carrier authorized to do health and accident insurance business in the State of Texas.

Application for License

Sec. 2. Hereafter, when any person shall desire to become an agent for a (i) local mutual aid association, (ii) a local mutual burial association, (iii) a statewide mutual assessment corporation, (iv) a stipulated premium company, (v) a county mutual insurance company, (vi) a casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, such person shall, in such form and giving such information as may be reasonably required, make application to the State Board of Insurance for a license to act as an agent. The application shall be accompanied by a certificate on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance carrier the applicant proposes to represent, stating that the insurance carrier has investigated the character and background of the applicant and is satisfied that he is trustworthy and qualified to hold himself out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state.

Issuance of License Under Certain Circumstances

Sec. 3. After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the State Board of Insurance shall issue a license to such person in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that such applicant shall not be authorized to write health and accident insurance unless: (i) applicant shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively

in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.

Examination of Applicant for License to Write Health and Accident Insurance

Sec. 4. (a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed and administered by the State Board of Insurance to determine his competency with respect to health and accident insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act; or

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance.

(b) (i) The State Board of Insurance shall, within sixty (60) days from the effective date of this Act, establish reasonable rules and regulations with respect to the scope, type and conduct of such written examination and the times and places within this State where such examinations shall be held; applicants, shall, however, be permitted to take such examinations at least once in each week at the office of the State Board of Insurance. The rules and regulations of the State Board of Insurance shall designate text books, manuals and other materials to be studied by applicants in preparation for examination pursuant to this Section. Such text books, manuals and other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the State Board of Insurance pursuant to this Section and such questions shall be limited to and substantially similar to the questions relating to health and accident insurance contained in the written examination prescribed by the State Board of Insurance pursuant to Article 21.07-1 of this Insur-

ance Code. The State Board of Insurance shall charge each applicant a fee of \$10.00 for the privilege of taking such written examination and which fee shall not be returned under any circumstance.

(ii) The State Board of Insurance may also establish reasonable rules and regulations whereby, in the discretion of the State Board of Insurance, any insurance carrier may be permitted to conduct written examinations for its agents who have received temporary licenses by appointment of such carrier, subject to such reasonable conditions, requirements and standards as the State Board of Insurance shall require and establish as a predicate for the granting of such authority and for the reasonable supervision, examination and inspection of each such carrier's procedures in giving examinations to its temporary licensees, but provided further that such authority so granted to any insurance carrier to give such examinations may be terminated by the State Board of Insurance on notice and hearing if it shall find that such authorized insurance carrier shall have violated the conditions, requirements and standards required of such carrier to qualify to conduct written examinations.

(c) After the State Board of Insurance shall determine that such applicant has successfully passed the written examination or it has been waived, and is a person of good character and reputation, the State Board of Insurance shall forthwith issue a license to such applicant which shall also authorize such applicant to write health and accident insurance for the designated insurance carrier.

(d) The State Board of Insurance is hereby authorized in its sole discretion to appoint an Advisory Board to make recommendations to it with respect to the scope, type and conduct of written examinations and the Advisory Board, if so appointed, shall consist of individuals experienced in the health and accident insurance business, and may include company officers, managers and employees, general managers and licensed agents. The members of the Advisory Board shall serve without pay.

(e) Whenever the State Board of Insurance shall receive any evidence indicating that an agent who obtained his license under the provisions of Section 4(a)(i) of this Article 21.07 is not competent, or not trustworthy or not of good character, the State Board of Insurance may at any time thereafter require such licensee to submit to the taking of such written examination within ninety (90) days after written notice thereof from the State Board of Insurance, and if upon taking such written examination as provided for in this Section 4 of this Article 21.07 such licensee shall fail to pass the said written examination or if such licensee shall fail to take such written examination within such ninety (90) day period, the license of such licensee may thereupon be terminated by the State Board of Insurance and such license shall thereafter be of no further force and effect.

#### Failure of Applicant to Qualify for License

Sec. 5. If the State Board of Insurance is not satisfied that the applicant for a license is trustworthy and of good character, or, if applicable, that the applicant, if required to do so, has not passed the written examination to the satisfaction of the State Board of Insurance, the State Board of Insurance shall forthwith notify the applicant and the insurance carrier in writing that the license will not be issued to the applicant, and return to said agent the \$10.00 fee for application for license and the \$4.00 fee for appointment.

#### Agent May Be Licensed to Represent Additional Insurers

Sec. 6. Any agent licensed under this Article may represent and act as an agent for more than one insurance carrier at any time while his license is in force, if he so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment, that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of \$4.00 for each additional appointment applied for, which fee shall accompany the notice.

#### Expiration and Renewal of License

Sec. 7. (a) Each license issued to an agent shall expire one year following the date of issue, unless prior thereto it is suspended or revoked by the State Board of Insurance or the authority of the agent to act for the insurance carrier is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked may be renewed from year to year upon request in writing of the agent.

(c) Upon the filing of a request for renewal of license and payment of a renewal fee as hereinafter required for the license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the State Board of Insurance or until the State Board of Insurance has refused, for cause, to issue the renewal license, as provided in this Article, and has given notice of the refusal in writing to the insurance carrier and the agent.

(d) The appointment or appointments given under any Section of this Article authorizing the agents to act as an agent for an insurance carrier shall continue in full force and effect without the necessity of renewal until terminated and withdrawn by the insurance carrier in accordance with Section 9 of this Article 21.07 or otherwise terminated in accordance with this Article 21.07, and each renewal license

issued to the agent shall authorize him to represent and act for the insurance carriers for which he holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article 21.07, to be the agent of the appointing insurance carriers, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1970, each such insurance carrier so appointing such agent shall file with the State Board of Insurance a certificate, upon forms promulgated by the State Board of Insurance, certifying that such insurance carrier desires to continue the appointment of such agent, and if such insurance carrier shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such insurance carrier has terminated the appointment of such agent in like manner as if compliance had been made by such insurance carrier with Section 9 of this Article.

Temporary License

Sec. 8. The State Board of Insurance, if it is satisfied with the honesty and trustworthiness of any applicant who desires to write health and accident insurance, may issue a temporary agent's license, authorizing the applicant to write health and accident insurance, as well as all other insurance authorized to be written by the appointing insurance carrier, effective for ninety (90) days, without requiring the applicant to pass a written examination, as follows:

To any applicant who has been appointed or who is being considered for appointment as an agent by an insurance carrier authorized to write health and accident insurance immediately upon receipt by the State Board of Insurance of an application executed by such person in the form required by this Article, together with a certificate signed by an officer or properly authorized representative of such insurance carrier certifying:

- (a) that such insurance carrier has investigated the character and background of such person and is satisfied that he is trustworthy and of good character;
- (b) that such person has been appointed or is being considered for appointment by such insurance carrier as its agent; and
- (c) that such insurance carrier desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the Board within seven days from the date on which the application and certificate were delivered to or mailed to the Board, the insurance carrier may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable or issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person

who does not intend to actively sell health and accident insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurance carrier is hereby prohibited from knowingly paying directly or indirectly to the holder of a temporary license under this Section any commissions on the sale of a contract of health and accident insurance to any person related to temporary licensee by blood or marriage, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of health and accident insurance to any person included in the foregoing classes of relationship.

Insurance Carrier to Notify State Board of Insurance of Termination of Contract; Communications Privileged

Sec. 9. (a) Every insurance carrier shall, upon termination of the appointment of any agent, immediately file with the State Board of Insurance a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Board shall thereupon terminate the license of such agent to represent such insurance carrier in this State.

(b) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed a privileged communication and shall not be admissible in evidence in any court action or proceeding except pursuant to subpoena of a court of record.

Denial, Refusal, Suspension or Revocation of Licenses

Sec. 10. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance if, after notice and hearing as hereafter provided, it finds that the applicant for, or holder of, such license:

- (1) Has wilfully violated any provision of the insurance laws of this State; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his own use or illegally withheld money belonging to an insurance carrier or an insured or beneficiary; or
- (5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or
- (6) Has been guilty of fraudulent or dishonest practices; or
- (7) Has materially misrepresented the terms and conditions of any insurance policy or contract; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by any insurance carrier, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(9) Is not of good character or reputation.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of, such license and the insurance carrier whom he represents or who desires that he be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurance carrier may appear to be heard and produce evidence. In the conduct of such hearing, the Board or any regular salaried employee specially designated by it for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon its own initiative or upon the request of the applicant or licensee. Upon termination of such hearings, findings shall be reduced to writing and, upon approval by the Board, shall be filed in its office and notice of the findings sent by registered mail to the applicant or licensee and the insurance carrier concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

#### Judicial Review of Acts of State Board of Insurance

Sec. 11. If the said Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the State Board of Insurance as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence, and not elsewhere, within twenty (20) days from the date of the order of said State Board of Insurance.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

#### Penalty

Sec. 12. Any person who individually, or as an officer or employee of an insurance carrier, or other corporation, wilfully violates any of the provisions of this Article shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six (6) months, or both, each such violation being a separate offense hereunder. In addition, if such offender holds a license as an agent, such license shall automatically expire upon such conviction.

#### State Board of Insurance May Establish Rules and Regulations

Sec. 13. The State Board of Insurance is hereby authorized to establish, and from time to time to amend, reasonable rules and regulations for the administration of this Article 21.07.

#### Fees and Use of Funds

Sec. 14. (a) It shall be the duty of the State Board of Insurance to collect from every agent of any insurance carrier writing insurance in the State of Texas under the provisions of this Article, an annual licensing fee and an initial appointment fee, as provided in Subsection (b) of this section, for each and every appointment by any insurance carrier, which fees shall constitute a fund to be used by the State Board of Insurance to enforce the provisions of this Article 21.07 and all laws of this State governing and regulating agents for such insurance carriers, as provided in Subsection (b) of this section.

(b) (1) For those agents writing life and accident insurance the annual license fee is Ten Dollars (\$10) and Four Dollars (\$4) for each appointment. The same fees shall be charged for those agents writing only health and accident insurance.

(2) For county mutual fire insurance agents writing insurance for any company organized and operating as a county mutual fire insurance company on May 22, 1953, the business of which company is devoted exclusively to the writing of industrial fire insurance on a weekly, monthly, or quarterly basis on a continuous premium payment plan, the annual license fee is Five Dollars (\$5) and Two Dollars (\$2) for each appointment.

(3) For any county mutual fire insurance company agent, other than those included in Subdivision (2) of this subsection, the annual license fee is Ten Dollars (\$10) and Four Dollars (\$4) for each appointment.

(4) For agents writing life insurance only for (i) local mutual aid associations, (ii) local mutual burial associations, (iii) statewide mutual assessment corporations, and (iv) stipulated premium companies, the annual license fee is Five Dollars (\$5) and Two Dollars (\$2) for each appointment.

(5) For any other type of insurance carrier licensed to do business in this state, the annual license fee is Ten Dollars (\$10) and Four Dollars (\$4) for each appointment.

(c) The State Board of Insurance is hereby given full power and authority under the provisions of this Article to use any portion of the funds herein created for the purpose of enforcing the provisions of this Article 21.07; and said State Board of Insurance is authorized to employ such person or persons as it may deem necessary to investigate and make reports upon any and all alleged violations of said laws and misconduct on the part of such agents and to pay the salaries and expenses of such person or persons so designated by it and all office employees and expenses necessary in the enforcement of this Article 21.07 out of the funds created hereunder and such person or persons so appointed by the State Board of Insurance are hereby authorized and empowered to administer the oath and to examine under oath any person deemed necessary in gathering information and evidence and to have the same reduced to writing if deemed necessary and all such expenses shall be paid out of said fund. If any residue for any years shall remain in said fund over and above the amount necessary to carry on the work and investigation and pay the expenses herein provided for, the same shall be carried over to the following year or years and used in the continuation of the enforcement of this Article 21.07 and the insurance laws of this State and all such funds are hereby appropriated for such purpose. The funds collected under this provision shall be paid into the State Treasury at least once each week and kept in a special fund and shall be paid out for salaries, traveling expenses, office expenses and other incidental expenses incurred by the State Board of Insurance hereunder upon proper account duly approved by the State Board of Insurance.

Provided, however, that at the termination of each biennium after the payment of all expenses of enforcement hereinbefore provided, any surplus of the enforcement fund created by the collection of the fees provided herein shall be transferred by the State Treasurer to the Examination Fund of the State Board of Insurance for such use as the State Board of Insurance may deem necessary in furthering the duties of the Examining Division of the State Board of Insurance.

#### Dual Licensing

Sec. 15. Any person who holds a license under the provisions of Article 21.07-1, Texas Insurance

Code, 1951, as amended, shall be entitled to receive a license under this Article 21.07, and be authorized to write health and accident insurance without being required to pass the examination as required under this Article 21.07. Any person who holds a license under the provisions of Article 21.14, Texas Insurance Code, 1951, as amended, shall be entitled to write health and accident insurance written by those companies for whom he is licensed under Article 21.14 without being required to pass the examination required under this Article 21.07.

#### Stamping of License

Sec. 16. When any license shall be issued by the State Board of Insurance to an applicant entitled to write health and accident insurance, the license shall have stamped thereon the words **HEALTH AND ACCIDENT INSURANCE**.

#### Expiration of Existing Licenses

Sec. 17. Each license issued prior to the effective date hereof under the provisions of Art. 21.07 and remaining in force at the effective date of this Act shall continue in full force and effect until such license would otherwise expire, and each such license so expiring shall be subject to renewability in accordance with the provisions of this Act upon each respective license expiration date. Any such license so continuing in force may, however, be revoked by the State Board of Insurance in accordance with the other provisions of this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 517, ch. 153, § 1; Acts 1959, 56th Leg., p. 665, ch. 308, §§ 1, 2; Acts 1969, 61st Leg., 2nd C.S., p. 168, ch. 25, § 1, eff. Sept. 19, 1969; Acts 1971, 62nd Leg., p. 2952, ch. 978, §§ 1, 2, eff. June 15, 1971.]

#### Partial repeal

*Article 21.07-1 repeals provisions of this article to the extent only as applicable to Legal Reserve Life Insurance Agents.*

Sections 2 and 3 of Acts 1969, 61st Leg., 2nd C.S., p. 168, ch. 25, provided: "Section 2. This Act shall be cumulative of all other existing laws but in the event of any conflict between the provisions of this Act and the provisions of any existing law, the provisions of this Act shall prevail, and all laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only.

"Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions and applications of this Act which can be given effect without the valid provisions and application, and to this end the provisions of this Act are declared to be severable."

#### Art. 21.07A. Penalty for Acting As, or Employing, Life, Health, or Accident Insurance Agent Without License

Any person who shall act as a life, health or accident insurance agent without having first obtained a license as herein provided, or who shall solicit life, health or accident insurance or act as a life, health or accident agent without having been appointed and designated by some duly authorized life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, local mutual aid association, or statewide mutual association to do so as herein provided,

or any person who shall solicit life, health or accident insurance or act as an agent for any person or insurance company or association not authorized to do business in Texas; or any officer or representative of any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company or association, or organization, local mutual aid association, or statewide mutual association who shall knowingly contract with or appoint as an agent any person who does not have a valid and outstanding license, as herein provided shall be guilty of a misdemeanor and, upon conviction, shall be fined any sum not in excess of Five Hundred Dollars (\$500) and shall be barred from receiving a license as an insurance agent for a period of at least two (2) years. [Acts 1933, 43rd Leg., p. 356, ch. 138, § 6; Acts 1935, 44th Leg., p. 679, ch. 289, § 6.]

### Art. 21.07-1. Legal Reserve Life Insurance Agents; Examination; Licenses

#### Legal Reserve Life Insurance Agent Defined

Sec. 1. (a) This Act shall be known as The Texas Agents Qualification and License Law for Agents of Legal Reserve Life Insurance Companies authorized to do business in Texas. It repeals the provisions of Article 21.07 of the Texas Insurance Code, 1951, to the extent only as applicable to such agents. This Act has no application to agents for local mutual aid associations, or for statewide mutual associations or for any type or kind of insurance organization other than legal reserve life insurance companies, and existing statutes, including Article 21.07 of the Texas Insurance Code, 1951, applicable to such agents, other than agents of legal reserve life insurance companies, shall remain in full force and effect.

(b) The term "life insurance agent" for the purpose of this Act means any person who is an authorized agent of a legal reserve life insurance company, and any person who is a sub-agent of such agent, who acts as such in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

(1) any regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the business obtained, and who does not solicit or accept from the public applications for insurance or annuity contracts;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annu-

ties issued by a legal reserve life insurance company, provided that such employers, officers, employees or trustees are not in any manner compensated, directly or indirectly, by the legal reserve life insurance company issuing such insurance or annuity contracts;

(3) banks or their officers and employees to the extent that such banks, officers and employees collect and remit premiums by charging same against accounts of depositors on the orders of such depositors;

(4) a ticket-selling agent of a public carrier with respect to accident life insurance tickets covering risks of travel;

(5) an agent selling credit life, health and accident insurance exclusively in connection with credit transactions, or acting as agent or solicitor for health and accident insurance under license issued pursuant to the provisions of Article 21.14 of the Texas Insurance Code.

(c) The term "sub-agent" means any person, except a regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, engaging in activities defined in Paragraph 1(b), above, who acts for or on behalf of a licensed life insurance agent in the solicitation of, negotiation for, or procurement or making of, or collection of premiums on, an insurance or annuity contract, whether or not he is designated by such agent as a sub-agent or a solicitor or by any other title. Each such sub-agent shall be deemed to be a life insurance agent, as defined above, and wherever, in succeeding Sections of this Act, the term "life insurance agent" is used, it shall include sub-agents, whether or not they are specifically mentioned. Each such sub-agent shall be subject to the provisions of this Act to the same extent as a life insurance agent.

(d) The terms "insurance or annuity contract," "insurance contract," and "annuity contract," shall mean a contract or policy of life, health or accident (including hospitalization) insurance, or an annuity contract, issued by any legal reserve company or insurer engaged in the business of writing life, health or accident (including hospitalization) insurance, or annuity contracts.

(e) The term "excess risk" shall mean all or any portion of a life, health or accident insurance risk or contract of annuity for which application is made through an agent, and which exceeds the amount of insurance or annuity which will be provided by the insurer for which such agent is licensed.

(f) The term "rejected risk" shall mean a life, health or accident insurance risk or annuity contract for which application has been made through an agent and which insurance or annuity contract is declined by the insurer for which such agent is licensed.

(g) The terms "Industrial" and "weekly premium life insurance on a debit basis" refer to the type of

life insurance defined in Article 3.52 of the Texas Insurance Code.

Acting for Unauthorized Companies Prohibited

Sec. 2. (a) No person shall, within this State, solicit, procure, receive, or forward applications for life insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of life insurance or annuity for any person other than himself, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State.

(b) Any agent shall be personally liable for any loss sustained by any insured or beneficiary on any contract of life insurance or annuity made by or through such agent, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State and, in addition, for any premium taxes which may become due under any law of this State by reason of such contract.

Acting as Agent Without License Prohibited; No Commissions to be Paid to Unlicensed Persons

Sec. 3. (a) No person shall act as a life insurance agent within this State until he shall have procured a license as required by the laws of this State.

(b) No insurer or licensed life insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person for services as a life insurance agent within this State, unless such person shall hold a currently valid license to act as a life insurance agent as required by the laws of this State; nor shall any person, other than a duly licensed life insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person has ceased to hold a license to act as a life insurance agent.

Application for License

Sec. 4. (a) Each applicant for a license to act as a life insurance agent within this State shall file with the Life Insurance Commissioner his written application on forms furnished by the Commissioner. The application shall be signed and duly sworn to by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim

and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life, or any other insurance in any State and whether such license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Life Insurance Commissioner in his discretion may prescribe. It is not intended that the Life Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Life Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he is trustworthy and qualified to hold himself out in good faith to the general public as a life insurance agent and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a filing fee in the amount of \$5.00 and, in the case of applicants required to take an examination administered by the Life Insurance Commissioner as hereafter prescribed, by an examination fee in the amount of \$10.00. In the event an applicant fails to qualify for, or is refused a license, the filing fee shall be returned; the examination fee shall not be returned for any reason. An examination fee shall be paid for each and every examination.

(d) No corporation, association, partnership, or any legal entity of any nature, other than an individual person, may be licensed as a life insurance agent.

Examination of Applicant for License

Sec. 5. (a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered, and as shall be prescribed by, the Life Insurance Commissioner, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the Life Insurance Commissioner; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the Board of Insurance Commissioners pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the Life Insurance Commissioner, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU).

(b) The Life Insurance Commissioner shall establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this State where they shall be held; provided, that applicants shall be permitted to take such examinations at least once in each week at the office of the Life Insurance Commissioner, and at least once in each month in the county court house of the residence of the applicant. The rules and regulations of the Commissioner shall designate text books, manuals and other materials to be studied by applicants in preparation for examinations pursuant to this Section. Such text books, manuals or other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the Commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the Commissioner pursuant to this Section.

(c) The Life Insurance Commissioner is authorized in his discretion to appoint an Advisory Board to make recommendations to him with respect to the scope, type, and conduct of written examinations and the times and places within the State where they shall be held. This Advisory Board, if appointed, shall consist of individuals experienced in the legal reserve life insurance business and in industrial life insurance, and may include legal reserve life insurance company officers and employees, general agents and managers, and licensed life insurance agents. The members of the Board shall serve without pay but, upon the authorization of the Life Insurance Commissioner, shall be reimbursed for their reasonable expenses in attending meetings of the Advisory Board.

(d) An applicant for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Life Insurance Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is to be licensed, subject to the following definitions and conditions:

(1) A combination life insurance agent is hereby defined as an agent writing both weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial life agent is an agent writing only weekly life insurance on a debit basis. A combination company is hereby defined as an insurer actual-

ly writing weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial company is an insurer writing only weekly premium life insurance on a debit basis.

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Life Insurance Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

(3) The combination or industrial insurer shall certify as to each applicant that he has completed the approved course of study and instruction and has successfully passed the examination in writing without aid.

(4) It shall be the duty of the Life Insurance Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination administered by the Commissioner pursuant to Sub-section (a) of this Section 5.

(5) The license to act as a life insurance agent issued to an applicant pursuant to the provisions of this Sub-section (d) shall be stamped COMBINATION OR INDUSTRIAL LICENSE on its face and shall automatically expire and be of no further force and effect when the holder ceases to act as a combination or industrial agent for a combination or industrial company.

#### Issuance or Denial of License

Sec. 6. (a) If the Life Insurance Commissioner is satisfied that the applicant is trustworthy and competent and after the applicant, if required to do so, has passed the written examination to the satisfaction of the Commissioner, a license shall be issued forthwith. If the applicant has not passed the written examination, or if license is denied for any of the reasons set forth in Section 12 of this Act, the Life Insurance Commissioner shall notify the applicant and the insurer in writing that the license will not be issued to the applicant.

#### Non-residents May Be Licensed

Sec. 7. (a) A person not resident in this State may be licensed as a life insurance agent upon compliance with the provisions of this Act, provided that the State in which such person resides will accord the same privilege to a citizen of this State.

(b) The Life Insurance Commissioner is further authorized to enter into reciprocal agreements with the appropriate official or any other State waiving

the written examination of any applicant resident in such other State, provided:

- (1) That a written examination is required of applicants for a life insurance agent's license in such other State;
- (2) That the appropriate official of such other State certifies that the applicant holds a currently valid license as a life insurance agent in such other State and either passed such written examination or was the holder of a life insurance agent's license prior to the time such written examination was required;
- (3) That the applicant has no place of business within this State in the transaction of business as a life insurance agent;
- (4) That in such other State, a resident of this State is privileged to procure a life insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other State.

#### Agent May Be Licensed to Represent Additional Insurers

Sec. 8. (a) Any life insurance agent licensed in this state may represent and act as a life insurance agent for more than one legal reserve life insurance company at any time while his license is in force, if he so desires. Any such life insurance agent and the company involved must give notice to the Commissioner of Insurance of any additional appointment or appointments authorizing him to act as a life insurance agent for an additional legal reserve life insurance company or companies. Such notice must set forth the insurer or insurers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment, that said insurer desires to appoint the applicant as its agent. This notice shall also contain such other information as the Commissioner may require. The agent shall be required to pay a fee of \$2.00 for each additional appointment applied for, which fee shall accompany the notice. Any insurer may file a request with the Insurance Commissioner for notification in the event any agent licensed to represent such insurer has given the Commissioner of Insurance notice of an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this state may place excess or rejected risks with any legal reserve life insurance company lawfully doing business in this state other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional appointment to represent such other insurer before receiving commissions or other compensation for his services.

#### Expiration and Renewal of License

Sec. 9. (a) Each license issued to a life insurance agent shall expire one year following the date of issue, unless prior thereto it is suspended or revoked by the Insurance Commissioner or the authority of the agent to act for the insurer is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed from year to year upon request in writing of the agent.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his efforts to acting as a life insurance agent, and if part only, how much time he devotes to such work.

(d) Upon the filing of a request for renewal of license, and payment of a renewal fee of \$5.00 for such license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license, as provided in Section 12, of this Act, and has given notice of such refusal in writing to the insurer and the agent.

(e) The appointment or appointments given under Section 4 or Section 8 of this Act authorizing the agents to act as a life insurance agent for a legal reserve life insurance company or companies, shall continue in full force and effect, without the necessity of renewal, until terminated and withdrawn by the companies in accordance with Section 11 of this Act, or otherwise terminated in accordance with this Act, and each renewal license issued to the agent shall authorize him to represent and act for the companies for which he holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article, to be the agent of the appointing companies, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1968, each such company so appointing such life insurance agent shall file with the Commissioner a certificate, upon forms promulgated by the Commissioner, certifying that such legal reserve life insurance company desires to continue the appointment of such life insurance agent, and if such company shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such company has terminated the appointment of such life insurance agent in like manner as if compliance has been made by such company with Section 11 of this Act.

#### Temporary License

Sec. 10. The Life Insurance Commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

- (a) To an applicant who has fulfilled the provisions of Section 4 of this Act where such

applicant will actually collect the premiums on industrial life insurance contracts during the period of such temporary license; provided, however, that if such temporary license is not received from the Commissioner within seven days from the date the application was sent to the Commissioner, the company may assume that the temporary license will be issued in due course and the applicant may proceed to act as an agent. For the purpose of this sub-section (a) an industrial life insurance contract shall mean a contract for which the premiums are payable at monthly or more frequent intervals directly by the owner thereof, or by a person representing the owner, to a representative of the company;

(b) To any person who has been appointed or who is being considered for appointment as an agent by an insurer immediately upon receipt by the Commissioner of an application executed by such person in the form required by Section 4 of this Act, together with a certificate signed by an officer or properly authorized representative of such insurer stating:

(1) that such insurer has investigated the character and background of such person and is satisfied that he is trustworthy;

(2) that such person has been appointed or is being considered for appointment by such insurer as its agent; and

(3) that such insurer desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the Commissioner within seven days from the date on which the application and certificate were delivered to or mailed to the Commissioner, the insurer may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable nor issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person who does not intend to actively sell life insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurer is hereby prohibited from knowingly paying directly or indirectly to the holder of a temporary license under this sub-section (b) any commissions on the sale of a contract of insurance on the life of the temporary licensee, or on the life of any person related to him by blood or marriage, or on the life of any person who is or has been during the past six months

his employer either as an individual or as a member of a partnership, association, firm or corporation, or on the life of any person who is or who has been during the past six months his employee, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of insurance to any person included in the foregoing classes of relationship.

(4) The Commissioner shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any life insurance company, if, after notice and hearing, he finds that such company has abused such temporary appointment powers. In considering such abuse, the Commissioner may consider, but is not limited to, the number of temporary appointments made by a company, the number of appointees sitting for examination as life insurance agents under this Article, and the number of appointees successfully passing said examination. Appeals from the Commissioner's decision shall be made in accordance with Section 13 hereof.

Company to Notify Commissioner of Termination of Contract;  
Communications Privileged

Sec. 11. (a) Every legal reserve life insurance company shall, upon termination of the appointment of any life insurance agent, immediately file with the Life Insurance Commissioner a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Commissioner shall thereupon terminate the license of such agent to represent such insurer in this State.

(b) Any information, document, record or statement required to be made or disclosed to the Commissioner pursuant to this Section shall be deemed a privileged communication and shall not be admissible in evidence in any court action or proceeding except pursuant to subpoena of a court of record.

Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Life Insurance Commissioner if, after notice and hearing as hereafter provided, he finds that the applicant for, or holder of such license:

(1) Has wilfully violated any provision of the insurance laws of this State; or

(2) Has intentionally made a material misstatement in the application for such license; or

(3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) Has misappropriated or converted to his own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

(5) Has otherwise demonstrated lack of trustworthiness or competence to act as a life insurance agent; or

(6) Has been guilty of fraudulent or dishonest practices; or

(7) Has materially misrepresented the terms and conditions of life insurance policies or contracts; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any life insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(9) Has obtained, or attempted to obtain such license, not for the purpose of holding himself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or members of his family or business associates; or

(10) Is not of good character or reputation.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Life Insurance Commissioner shall give notice of his intention so to do, by registered mail, to the applicant for, or holder of such license and the insurer whom he represents or who desires that he be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as a life insurance agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Commissioner unless the applicant

shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

#### Judicial Review of Acts of Commissioner

Sec. 13. If the said Life Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Life Insurance Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence, and not elsewhere, within twenty (20) days from the date of the order of said Life Insurance Commissioner.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

#### Penalty

Sec. 14. Any person who individually, or as an officer or employee of a legal reserve life insurance company, or other corporation, violates any of the provisions of this Act shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender holds a license as a life insurance agent, such license shall automatically expire upon such conviction.

#### Commissioner May Establish Rules and Regulations

Sec. 15. The Life Insurance Commissioner is authorized to establish, and from time to time to amend, reasonable rules and regulations for the administration of this Act.

[Acts 1955, 54th Leg., p. 621, ch. 213; Acts 1959, 56th Leg., p. 665, ch. 308, § 3; Acts 1967, 60th Leg., p. 711, ch. 294, § 1; Acts 1969, 61st Leg., p. 1990, ch. 679, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2047, ch. 703, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 1775, ch. 650, § 1, eff. June 16, 1973.]

#### Art. 21.07-2. Life Insurance Counselor

##### Definition of Term

Sec. 1. The term "Life Insurance Counselor" as used in this Act shall mean any person who, for

money, fee, commission or any other thing of value offers to examine, or examines any policy of life insurance or any annuity or pure endowment contract for the purpose of giving, or gives, or offers to give, any advice, counsel, recommendation or information in respect to the terms, conditions, benefits, coverage or premium of any such policy or contract, or in respect to the expediency or advisability of altering, changing, exchanging, converting, replacing, surrendering, continuing or rejecting any such policy or contract, or of accepting or procuring any such policy or contract from any insurer, or who in or on advertisements, cards, signs, circulars or letterheads, or elsewhere, or in any other way or manner by which public announcements are made, uses the title "insurance adviser," "insurance specialist," "insurance counselor," "insurance analyst," "policyholders' adviser," "policyholders' counselor," or any other similar title, or any title indicating that he gives, or is engaged in the business of giving advice, counsel, recommendation or information to an insured, or a beneficiary, or any person having any interest in a life insurance, annuity or pure endowment contract.

License Required; Issuance by Board

Sec. 2. No person shall act as a Life Insurance Counselor, as defined in Section 1 hereof, unless authorized so to act by a license issued by the Board of Insurance Commissioners of the State of Texas pursuant to the provisions of this Act.

Exemptions

Sec. 3. The provisions of this Act shall not apply to the following persons:

- (a) Licensed agents for a life insurance company while acting for an insurer as its agent.
- (b) Licensed attorneys at law of this State when acting within the course or scope of their profession.
- (c) Licensed public accountants of this State while acting within the course or scope of their profession.
- (d) A regular salaried officer or employee of an authorized insurer issuing policies of life insurance while acting for such insurer in discharging the duties of his position or employment.
- (e) An officer or employee of any bank or trust company who receives no compensation from sources other than the bank or trust company for such activities connected with his employment.
- (f) Employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company.

Contract, Writing Required; Duplicates; Other Requisites

Sec. 4. No contract or agreement between a Life Insurance Counselor, as defined in this Act, and any other person, firm or corporation, relating to the activities, services, advice, recommendations or information referred to in Section 1 of this Act, shall be enforceable by or on behalf of such Life Insurance Counselor unless it is in writing and executed in duplicate by the person, firm or corporation to be charged, nor unless one of said duplicates is delivered to and retained by such person, firm or corporation when executed, nor unless such contract or agreement plainly specifies the amount of the fee paid or to be paid by such person, firm or corporation, and the services to be rendered by such Life Insurance Counselor; provided, however, that the foregoing provisions shall not be applicable to any of the persons set out in Section 3 above.

Prohibition of Dual Compensation

Sec. 4a. A person licensed under the provisions of this Act who is also licensed under Article 21.07 or Article 21.07-1 of this Code who receives a commission or compensation for his services as an agent licensed under Article 21.07 or Article 21.07-1, shall not be entitled to receive a fee for his service to the same client as a Life Insurance Counselor.

Mode of Licensing and Regulation

Sec. 5. The licensing and regulation of a Life Insurance Counselor, as that term is defined herein, shall be in the same manner and subject to the same requirements as applicable to the licensing of agents of legal reserve life insurance companies as provided in Article 21.07-1 of the Texas Insurance Code, 1951, or as provided by any existing or subsequent applicable law governing the licensing of such agents, and all the provisions thereof are hereby made applicable to applicants and licensees under this Act, except that a Life Insurance Counselor shall not advertise in any manner and shall not circulate materials indicating professional superiority or the performance of professional service in a superior manner; provided, however, that an appointment to act for an insurer shall not be a condition to the licensing of a Life Insurance Counselor.

In addition to the above requirements, the applicant for licensure as a Life Insurance Counselor shall submit to the Commissioner evidence of high moral and ethical character, documentation that he has been licensed as a life insurance agent in excess of three years. After the Insurance Commissioner has satisfied himself as to these requirements, he shall then cause the applicant for a Life Insurance Counselor's license to sit for an examination which shall include the following:

Such examination shall consist of five subjects and subject areas:

- (a) Fundamentals of life and health insurance;
- (b) Group life insurance, pensions and health insurance;

- (c) Law, trust and taxation;
- (d) Finance and economics; and
- (e) Business insurance and estate planning.

Definitions

Sec. 2. The following words and phrases when used in this Act shall be defined and construed as follows:

(a) "Managing General Agent" shall mean any person, firm or corporation who has supervisory responsibility for the local agency and field operations of an insurance company or carrier within this state, or any part thereof, and who may perform any of the following acts for a company or carrier: receive and pass upon daily reports and monthly accounts; receive and be responsible for agency balances; handle the adjustment of losses; or, appoint or direct local recording agents, state agents, or special agents within this state, or any part thereof.

(b) "Company" or "Carrier" shall mean any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds, or other insurance carrier licensed to transact business in the State of Texas, excepting, however, those which write only life, health and accident insurance.

(c) "Commissioner" shall mean the Commissioner of Insurance.

(d) "Board" shall mean the State Board of Insurance.

Acting Without License Prohibited

Sec. 3. It shall be unlawful for any person, firm or corporation to act as a managing general agent in behalf of any insurance company or carrier without having in force the license provided for herein.

Application for License; To Whom License May be Issued

Sec. 4. Each applicant for license shall be a resident of Texas and file a written sworn application on forms furnished by the Commissioner.

(a) The Commissioner shall issue a license to an applicant upon successful completion of the examination and compliance with the other requirements of this Act.

(b) The Commissioner shall issue a license to a partnership where each of the partners has qualified for a license under this Act.

(c) The Commissioner shall issue a license to a corporation if it finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a managing general agent; and

(2) That every officer, director, and shareholder of the corporation is individually licensed as a managing general agent under the provisions of this Insurance Code; provided, however, that in the event ownership of the shares of such corporation is

No license shall be granted until such individual shall have successfully passed each of the five parts above enumerated. Such examinations may be given and scheduled by the Commissioner at his discretion. Individuals currently holding Life Insurance Counselor licenses issued by the Texas State Board of Insurance, who do not have the equivalent of the requirements above listed, shall have one year from the date of enactment hereof to so qualify.

Intent of Legislature; Statutes and Amendments Applicable

Sec. 6. It is the legislative intent, and it is hereby provided, that the licensing and regulation of any person acting as a Life Insurance Counselor shall be subject to the same statutes and requirements applicable to the licensing and regulation of agents of legal reserve life insurance companies. In event of subsequent legislative enactment applicable to agents of legal reserve life insurance companies in lieu of, or as an amendment to, present Article 21.07 of the Texas Insurance Code, it is hereby provided that such statute shall be applicable to any person acting as a Life Insurance Counselor, as defined in this Act.

Violations; Misdemeanor; Penalties

Sec. 7. Any person who shall act as a Life Insurance Counselor, as defined herein, without having first obtained a license as herein provided, or who violates any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500), or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender holds a license hereunder, such license shall automatically expire upon such conviction and the offender shall be barred from license for a period of at least two (2) years.

Partial Invalidity

Sec. 8. Should any Section or part thereof of this Act be held to be invalid for any reason, such holding shall not be construed as affecting the validity of any of the remaining Sections or parts thereof, it being the legislative intent that the remainder of this Section shall stand, notwithstanding the invalidity of any Section or part thereof.

[Acts 1955, 54th Leg., p. 39, ch. 29; Acts 1969, 61st Leg., 2nd C.S., p. 121, ch. 13, §§ 1, 2, eff. Sept. 19, 1969.]

Art. 21.07-3. Managing General Agents' Licensing Act

Name of Act

Sec. 1. This Act may be referred to as the "Managing General Agents' Licensing Act."

transferred to an unlicensed shareholder, the corporation shall still be entitled to a license if such unlicensed shareholder qualifies as a licensed managing general agent within 90 days from the date of such transfer.

(d) Nothing contained herein shall be construed to permit any unlicensed shareholder or any employee or agent of any corporation to perform any act of a managing general agent without obtaining a managing general agent's license.

(e) Since all officers, directors, and shareholders must be licensed as managing general agents in order for a corporation to receive a license as a managing general agent, the Commissioner shall not require a corporation to take the examination provided in Section 6 of this Act.

(f) If at any time, any officer, director, or shareholder of any corporation holding a managing general agent's license does not qualify as a licensed managing general agent, or if any unlicensed shareholder does not qualify within the 90-day period as herein provided, the license of such corporation to act as a managing general agent shall be cancelled or denied in accordance with the other provisions of this Act. Each corporation licensed as a managing general agent shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

(g) Each corporation licensed as a managing general agent shall immediately notify the Commissioner upon any change in its officers, directors, or shareholders.

(h) Nothing in this section shall prevent any shareholder from selling or otherwise transferring his stock in any corporation to a company, carrier or managing general agency licensed to do business in Texas, nor prevent any such company or carrier from owning all or any portion of the stock of such corporation.

**Issuance of Licenses to Those Presently Acting as Managing General Agents; Renewals**

Sec. 5. (a) Any person, partnership, or corporation having a certificate of authority under Article 21.01 of the Insurance Code to operate as a managing general agent in this state, and who was, in fact, acting as a managing general agent for one or more companies or carriers in this state on the effective date of this Act, shall be entitled to receive a license without having to comply with the requirements of Sections 4 and 6 of this Act, but shall be subject to the other provisions of this Act.

(b) Any such person, partnership, or corporation shall file a written sworn application on forms provided by the commissioner within 60 days from the effective date of this Act.

(c) Any corporation applying for or receiving a license under this section shall file, under oath, a list of names and addresses of its officers, directors, and agency manager with its application for license or renewal and the commissioner may require information, under oath, on forms provided by him as to the officers, directors, and agency manager of such corporation so as to satisfy himself concerning the provisions of Section 12 of this Act.

(d) Those applicants meeting the requirements of this section shall be issued licenses by the commissioner within 90 days from the effective date of this Act and shall be permitted to continue to act during said 90-day period without having a license.

(e) Any such licensee shall be entitled to the renewal of such license from year to year without reference to the provisions of Sections 4 and 6 of this Act, but shall be subject to all other provisions of this Act.

(f) No corporate licensee qualifying under this section, nor any shareholder owning stock in such corporation, shall ever issue or transfer any stock in said corporation to any person, partnership, corporation or other entity for the purpose of inducing the placement of any policy of insurance with said licensee.

(g) No individual or partnership qualifying for a license under this section shall ever transfer any interest in said proprietorship or partnership to any person, partnership, corporation or other entity for the purpose of inducing the placement of any policy of insurance with said licensee.

**Examination Required; Exceptions**

Sec. 6. Each applicant for a license shall submit to, and must pass to the satisfaction of the commissioner, a written examination compiled and administered by the commissioner testing applicant's competence with respect to insurance and familiarity with the insurance laws of this state.

**Emergency License without Examination**

Sec. 7. In the event of death or disability of a managing general agent or for other good cause satisfactory to the commissioner, he may issue to an applicant a temporary or emergency license for a period not longer than six months, without requiring an examination, provided the other requirements of this Act are met.

**Conduct of Examinations**

Sec. 8. All examinations provided hereunder shall be conducted by the commissioner at such times and places as prescribed by the commissioner, but not less than four times annually. Applicants shall be given ten days' notice of the time and place of such examinations. All examinations shall be in writing.

**Expiration of License; Renewal**

Sec. 9. Every license issued hereunder shall expire one year from the date of its issue, unless an

application to qualify for renewal of such license shall be filed with the commissioner and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

#### Fees

Sec. 10. Any applicant for a managing general agent's license shall pay a fee of \$15 at the time application is made.

Any application for the renewal of a managing general agent's license shall pay a fee of \$25 at the time application is made.

#### Only One License Required—Notices of Appointment by Company Required

Sec. 11. (a) Any license issued under this Act shall entitle the licensee to represent or act for one or more companies or carriers as a managing general agent. A separate license for each individual company or carrier represented by a licensee shall not be required.

(b) Any license issued under this Act shall not lapse, nor shall an application for renewal be denied, for the reason that a licensee may not then be appointed to represent any company or carrier.

(c) Each appointment to act as a managing general agent must be reported to the commissioner on forms required by him.

#### Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. A license may be denied, suspended for a period of time, revoked or the renewal thereof refused by the commissioner if, after notice and hearing as hereinafter provided, he finds that the applicant for, or holder of such license:

(a) has wilfully violated or participated in the violation of any provisions of this Act or any of the insurance laws of this state; or

(b) has intentionally made a material misstatement in the application for such license; or

(c) has obtained, or attempted to obtain such license by fraud or misrepresentation; or

(d) has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity; or

(e) has with intent to deceive materially misrepresented the terms or effect of any contract of insurance, or has engaged in any fraudulent transaction; or

(f) has been convicted of a felony, or of any misdemeanor of which criminal fraud is an essential element; or

(g) has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or not of good character and reputation.

#### Notice and Hearings

Sec. 13. (a) Before any license shall be denied (except for the failure to pass any examination required pursuant to this Act), or suspended or revoked, or the renewal thereof refused hereunder, the commissioner shall give notice of his intention so to do by certified mail to the applicant for, or holder of such license, and shall set a date not less than 20 days nor more than 30 days from the date of mailing of such notice when the applicant or licensee may appear to be heard and to produce evidence. Such notice of hearing shall contain specific reasons for such hearing and a listing of matter to be heard at such hearing. In the conduct of such hearing, the commissioner or any regular employee thereof designated by him for such purpose shall have the power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon the termination of such hearing, findings shall be reduced to writing, and upon approval by the commissioner, shall be filed in his office and notice of the findings contained in an order of the commissioner shall be sent by certified mail to the licensee or applicant. Such applicant or licensee shall then, if he so desires, appeal to the State Board of Insurance, as provided in the Insurance Code, from any order of the commissioner.

(b) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass any examination required by this Act) shall be entitled to file another application for license herein provided within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the commissioner unless the applicant shows good cause why such denial, refusal, or revocation of his license shall not be deemed a bar to the issuance of a new license.

#### Judicial Review of Acts of Commissioner and the Board

Sec. 14. If the commissioner shall refuse an application for license as provided in this Act, or shall suspend, revoke or refuse to renew any license at a hearing as hereinbefore provided, and such action is upheld upon review to the board as in this Code provided, and if the applicant or accused thereafter be dissatisfied with the action of the commissioner and the board he may appeal from such action by filing suit against the commissioner and the board as defendants in any of the district courts of Travis County, Texas, or in any district court in the county of applicant's residence, and not elsewhere, within 20 days from the date of the order and action of the said board.

Said action shall have precedence over all other causes of a different nature on the docket. Upon the filing and perfection of such appeal, orders of the commissioner and the board shall be suspended and held for naught until a final court order or decree affirming such action. This appeal shall not be limited to questions of law and shall be tried and determined upon trial de novo to the same extent as now provided in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The commissioner and the board shall not be required to give any appeal bond in any cause arising hereunder.

#### Notice to Last Address

Sec. 15. Where notice to the applicant or accused is provided for in any part of this Act, notice by certified mail to his last known address shall be sufficient.

#### Act Inapplicable To

Sec. 16. No provisions of this Act shall apply to the transaction of the Life, Health and Accident Insurance business nor shall it apply to any of the following:

(a) Any actual full-time salaried employee of any insurance company or carrier licensed to do business in Texas while acting for, and in connection with the insurance business of, such company or carrier.

(b) Any adjuster of losses, or inspector of risks, for an insurance company or carrier licensed to do business in Texas.

#### Fees Collected

Sec. 17. The fees herein provided for, when collected, shall be placed with the state treasurer in a separate fund, which shall be known as the managing general agents' fund, provided that no expenditures shall be made from said fund except under authority of the Legislature as set forth in the general appropriations bill; provided further that no appropriation shall ever be made out of the general revenue fund for the purpose of administering this Act or any provision thereof.

#### Repeal

Sec. 18. All laws or parts of laws pertaining to any phase of the insurance business, which are in conflict with this Act, shall be and the same are hereby repealed; but all laws, civil and criminal, affecting insurance agents, insurance companies or insurance carriers or the insurance business, which are not in conflict herewith, shall not be affected by the provisions of this Act; but this Act shall be deemed cumulative of such laws.

#### Violations of Act

Sec. 19. Any person, firm, or corporation who violates any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction, shall be fined not more than \$200.

#### Enforcement of Act

Sec. 20. The attorney general, or any district or county attorney, or the commissioner or board may institute any injunction proceeding or such other proceeding to enforce the provisions of this Act, and to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business in violation of this Act or any of the provisions thereof. The provisions of this section are cumulative of the other penalties or remedies provided for in this Act.

#### Administration of Act

Sec. 21. The administration of this Act shall be vested in the State Board of Insurance who may establish, and from time to time amend, reasonable rules and regulations for the administration of this Act.  
[Acts 1967, 60th Leg., p. 2048, ch. 757, eff. Aug. 28, 1967.]

### Art. 21.07-4. Licensing of Insurance Adjusters

#### Definitions

Sec. 1. As used in this Act, unless the context otherwise requires:

(a) "Adjuster" means any person who, as an independent contractor, or as an employee of an independent contractor, adjustment bureau, association, insurance company or corporation, local recording agent, managing general agent, or self-insured, investigates or adjusts losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims.

(b) "Adjuster" shall not include:

(1) an attorney at law who adjusts insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster;

(2) a salaried employee of an insurer who is not regularly engaged in the adjustment, investigation, or supervision of insurance claims;

(3) persons employed only for the purpose of furnishing technical assistance to a licensed adjuster, including, but not limited to, photographers, estimators, private detectives, engineers, handwriting experts, and attorneys at law;

(4) a licensed agent or general agent of an authorized insurer who processes undisputed and/or uncontested losses for such

insurer under policies issued by said agent or general agent;

(5) a person who performs clerical duties with no negotiations with the parties on disputed and/or contested claims;

(6) any person who handles claims arising under life, accident and health insurance policies.

(c) "Insurer" means any insurance company or self-insured.

(d) "Commissioner" means the commissioner of insurance.

(e) "Board" means the State Board of Insurance.

License Required; Penalty

Sec. 2. (a) No person shall act as or hold himself out to be an adjuster in this state unless then licensed therefor by this state, except that an individual, who is undergoing education and training as an adjuster under the direction and supervision of a licensed adjuster, may for a period not exceeding 12 months act as an adjuster without having an adjuster's license, if at the beginning of such training period, the name of such trainee has been registered as such with the commissioner. No license shall be required under this article of a nonresident insurance adjuster for the adjustment in this state of a single loss, or losses arising out of a catastrophe common to all such losses, or who is acting as a temporary substitute for a licensed adjuster, unless as outlined specifically in a separate section of this law.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500, or by confinement in the county jail for not more than six months, or by both such fine and confinement.

Application for License

Sec. 3. Application for a license as an insurance adjuster shall be made to the board upon forms as prescribed and furnished by said board. As a part of, or in connection with any such application, the applicant shall furnish such information concerning his identity, personal history, experience, business record, and other pertinent facts as said board may reasonably require.

Nonresidents May Be Licensed

Sec. 4. (a) A person, not a resident of this state, may be licensed as an insurance adjuster upon compliance with the provisions of this Act, provided that the state in which such person resides will accord the same privilege to a citizen of this state.

(b) The commissioner is authorized to enter into a reciprocal agreement with the appropriate official of

any state whereby any examination of any applicant resident in such other state is waived, provided:

(1) that a written examination be required of applicants for an insurance adjuster's license in such other state;

(2) that the appropriate official of such other state certifies that such applicant holds a currently valid license as an insurance adjuster in such other state by passing such written examination, or holds a currently valid license issued by reason of the applicant's exemption from the requirements of an examination;

(3) that the applicant has no place of business in this state for the transaction of business as an insurance adjuster;

(4) that in such other state a resident of Texas is privileged to procure an insurance adjuster's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state; and

(5) payment of fees as required by this Act.

Catastrophe or Emergency Adjusters

Sec. 5. In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the commissioner shall, upon application, issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed adjusters. Such emergency license shall remain in force for a period not to exceed 90 days, unless extended for an additional period of 90 days by the commissioner. The applicant must be certified by (i) a person licensed under the provisions of this Act, or by (ii) an insurer which maintains an office in this state and is licensed to do business in this state. The licensed adjuster or insurer who certifies said applicant under the provisions of this section of this Act shall be responsible for the loss or claims practices of the emergency license holder.

Within five days of any applicant commencing work as an adjuster hereunder, the employer of such adjuster shall certify to the commissioner such application without being deemed in violation of this Act, provided that the commissioner may, after notice and hearing, revoke said emergency license upon the grounds as otherwise contained in this Act providing for revocation of an adjuster's license.

The fee for an emergency license shall be \$10 and shall be due and payable within 30 days of the issuance of such emergency license.

Licensed Adjusters Required: Insurers' Responsibility

Sec. 6. (a) An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an insurance adjuster unless such person is currently licensed as such as required in this Act.

(b) Prior to referring any such claim or loss, the insurer shall ascertain from the commissioner whether the proposed insurance adjuster is currently licensed as such. Having once ascertained that a particular person is so licensed, the insurer may assume that such licensee will continue to be so licensed until the insurer has knowledge, or receives information from the commissioner, to the contrary.

#### Qualifications for Adjuster's License

Sec. 7. The commissioner shall license as an insurance adjuster only an individual who has otherwise complied with this Act, and who has furnished evidence satisfactory to the board that:

- (1) he is at least 18 years of age;
- (2) he is a bona fide resident of this state, or is a resident of a state or country which will permit residents of this state to act as insurance adjusters in such other state or country;
- (3) if he is a nonresident of the United States, he has complied with all federal laws pertaining to employment or the transaction of business in the United States;
- (4) he is a trustworthy person;
- (5) he has had experience or special education or training with reference to the handling of loss claims under insurance contracts of sufficient duration and extent to make him competent to fulfill the responsibilities of an insurance adjuster; and
- (6) he has successfully passed an examination as required by the commissioner in accordance with this Act or has been exempted according to the provisions of this Act.

#### Special Licenses

Sec. 8. (a) If the board considers it necessary, a special insurance adjuster's license may be issued under this Act to any license applicant in the manner provided for the issuance of an insurance adjuster's license.

(b) A special insurance adjuster's license shall specifically limit the lines of insurance which may be handled by the licensee.

(c) No person who is acting under a special insurance adjuster's license may handle any other lines of insurance other than those lines specified in the license.

(d) Any person who violates the provisions of Subsection (c) of this section is subject to the penalty provided in Subsection (b) of Section 2 of this Act.

#### Advisory Board

Sec. 9. The commissioner, with the approval of the board, shall appoint an advisory board to make recommendations to him with respect to the scope, time and conduct of written examinations, and the times and places within the state where they shall be

held, and such other matters as the commissioner may submit to the board for their recommendations. This advisory board shall consist of five members, namely, the chairman of the Joint Conference Committee on the Unauthorized Practice of Law of the State Bar of Texas and four members with knowledge and experience in the insurance adjusting profession, one member from a domestic insurance company authorized to do business in Texas, one member from a foreign insurance company licensed to do business in Texas, and two independent adjusters. The members of the advisory board shall serve without pay, but, upon authorization of the commissioner, shall be reimbursed for their reasonable expenses in attending meetings of the advisory board.

#### Examination for License

Sec. 10. Each applicant for a license as an adjuster shall, prior to the issuance of such license, personally take and pass, to the satisfaction of the commissioner, an examination given by the commissioner as a test of his qualifications and competency; but the requirement of an examination shall not apply to any of the following:

- (1) an applicant who for the 90-day period next preceding the effective date of this Act has been principally engaged in the investigation, adjustment, or supervision of losses and who is so engaged on the effective date of this Act;
- (2) an applicant for the renewal of a license issued hereunder; or
- (3) an applicant who is licensed as an insurance adjuster, as defined by this statute, in another state with which state a reciprocal agreement has been entered into by the commissioner;
- (4) any person who has completed a course or training program in adjusting of losses as prescribed and approved by the commissioner and is certified to the commissioner upon completion of the course that such person has completed said course or training program, and has passed an examination testing his knowledge and qualification, as prescribed by the commissioner.

#### Scope of Examination

Sec. 11. (a) Each examination for a license as an adjuster shall be as the board may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state, applicable to such a licensee.

(b) The board shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license.

#### Examination; Form; Time

Sec. 12. (a) The answers of the applicant to any such examination shall be written by the applicant

under supervision of the commissioner. Any such written examination may be supplemented by oral examination.

(b) The examination shall be given at such times and places within this state as the board deems necessary reasonably to serve the convenience of both the commissioner and applicants.

(c) The commissioner may require a waiting time of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(d) Scheduling and administration of examinations by persons approved by the board pursuant to Section 10(4) shall be effected by such persons.

#### Form of Adjuster's License

Sec. 13. The commissioner shall prescribe the form of the insurance adjuster's license. The license shall contain:

- (1) the name of the insurance adjuster and the address of his place of business;
- (2) date of issuance and date of expiration of the license; and
- (3) firm or insurer with whom insurance adjuster is employed at time license is issued.

#### Fees for License and Examination

Sec. 14. (a) The commissioner shall collect in advance the following fees for an adjuster's license and examination:

- (1) Insurance adjuster's license, each year, not in excess of \$25.
- (2) For each examination, given by the board, a fee, not in excess of \$25.

(b) The fees prescribed in Subsection (1) of this section shall accompany the application for an original license or a renewal thereof.

#### Place of Business

Sec. 15. Every licensed adjuster shall have and maintain in this state a place of business accessible to the public. Such place of business shall be located where the adjuster principally conducts transactions under his license. The address of his place of business shall appear on all licenses of the licensee, and the licensee shall promptly notify the commissioner of any change thereof.

#### Expiration and Renewal of Licenses

Sec. 16. (a) An adjuster's license shall expire one year next following the date of issuance.

(b) Subject to the right of the commissioner to suspend, revoke, or refuse to renew an adjuster's license, any such license may be renewed by filing, on the form prescribed by the commissioner, on or before the expiration date, a written request, by or on behalf of the licensee, for such renewal, accompanied by payment of the renewal fee.

(c) If the request and fee for renewal of an adjuster's license are filed with the commissioner prior to the expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license or until the expiration of five days after the commissioner has refused to renew the license and has mailed notice of such refusal to the licensee. Any request for renewal filed after the date of expiration may be considered by the commissioner as an application for a new license.

#### Denial, Suspension, or Revocation of License

Sec. 17. The commissioner may deny, suspend, revoke, or refuse to renew any adjuster's license for any of the following causes:

- (1) for any cause for which issuance of the license could have been refused had it been existent and been known to the board;
- (2) if the licensee willfully violates or knowingly participates in the violation of any provision of this Act;
- (3) if the licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud, or has failed to pass any examination required under this Act;
- (4) if the licensee has misappropriated, or converted to his own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) if the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract, or has engaged in any fraudulent transactions;
- (6) if a licensee is convicted, by final judgment, of a felony; or
- (7) if in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the commissioner, incompetent, untrustworthy, or a source of injury to the public.

#### Procedure for Refusal, Suspension, or Revocation

Sec. 18. (a) The commissioner may revoke or refuse to renew any license of an adjuster immediately and without hearing, upon the licensee's conviction of a felony, by final judgment, in any court of competent jurisdiction.

(b) The commissioner may deny, suspend, revoke, or refuse to renew a license:

- (1) by order or notice given to the licensee not less than 15 days in advance of the effective date of the order or notice, subject to the right of the licensee to demand in writing, a hearing, before the board after receipt of notice and before the effective date of the revocation. Pending such hearing, the license may be suspended.

(2) by an order after a hearing which is effective 10 days after the order is issued subject to appeal to a district court in Travis County.

#### Duration of Suspension

Sec. 19. (a) Every order suspending any such license shall specify the period during which the suspension shall be effective, which period shall in no event exceed 12 months.

(b) The holder of any such license which has been revoked or suspended shall surrender the license certificate to the commissioner at his request.

#### Reinstatement or Relicensing

Sec. 20. The commissioner shall not reinstate the license of, or reissue a license to, any licensee or former licensee, whose license has been suspended, revoked or renewal thereof refused until the cause for the suspension, revocation, or refusal of such license is no longer existing and subject to the approval of the commissioner.

#### Repeal

Sec. 21. All laws and parts of laws in conflict with this Act are hereby repealed. Upon the passage of this Act the provisions of The Private Investigators and Private Security Agencies Act, as amended (Article 4413 (29bb), Vernon's Texas Civil Statutes), will have no applicability to insurance adjusters licensed pursuant to this Act. Article 19-01(3), Title 122-A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is hereby expressly repealed.

#### Severability

Sec. 22. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 1045, ch. 407, eff. Aug. 27, 1973.]

#### Art. 21.08. Renewal or Service Commissions to Agents of Life Companies Discontinuing Business in State; Statements and Reports

If any life insurance company now engaged or which hereafter may be engaged in the business of issuing policies of life insurance upon the lives of citizens of this State shall discontinue such business, it shall nevertheless continue to be liable for the payment of renewal or service commissions on policies of life insurance theretofore written in accordance with the terms of its agency contracts theretofore made with agents residing in the State of Texas.

Every such company shall furnish monthly to each person who may be entitled to receive service or

renewal commissions from such company a statement showing such policies written by such person for such company as shall have terminated during the month for which the statement is made, and shall furnish to each such person not less than quarterly a detailed statement of all policies written by such person for such company on the lives of residents of the State of Texas, showing the policies in force, the policies which have terminated, and the reason for termination. Provided, however, that no such statements need be furnished after the period during which service or renewal commissions are payable has ended as to all of the policies written by such person for such company.

In any suit against any such company for the recovery of service or renewal commissions, it shall be presumed that all policies written in such company upon the lives of residents of Texas by the person bringing such suit have continued in effect unless and until the contrary is proven by the defendant by competent evidence.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.09. Resident Agents, Companies Excepted

Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a nonresident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through regularly licensed local recording agents of such companies in Texas. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier including Fidelity and Surety Companies to solicit business and to write, sign, execute and deliver policies of insurance and to bind companies on insurance risks, and who maintains an office and a record of such business and the transactions which are involved, who collects premiums on such business and otherwise performs the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides, and with the Board of Insurance Commissioners.

This Article shall not apply to insurance companies whose general plan of operation does not contemplate the use of local recording agents, and such

companies may issue policies signed by any of their other resident licensed agents.

This Article shall not apply to bid bonds issued by any surety company authorized to do business in the State of Texas in connection with any public or private contract.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1963, 58th Leg., p. 69, ch. 47, § 1.]

#### Art. 21.10. Affidavit of Company

Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company is issued authorizing it to transact business in this State, the Board shall require in every case, in addition to the other requirements already made and provided by the law, that each such insurance company shall file with the Board an affidavit that it has not violated any provision of Articles 21.09, 21.11, 21.12, and 21.13 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.11. Commissions to Non-Residents; Cancellation of Non-Resident Agent's License; Non-Resident Agent not to Act as Excess Agent

Any person, agent, firm, or corporation licensed by the Board to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Board as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent; excepting however, that on any policy of insurance originated by a Licensed Non-Resident Insurance Agent, as hereinafter defined, and covering property or persons in this State, a Texas Local Recording Agent may divide the commission with the originating Licensed Non-Resident Insurance Agent, but in any such case the insurance company or carrier shall pay to the Texas Local Recording Agent through which such policy is issued, signed or countersigned, his minimum share, which shall be a sum not less than the amount of commission or brokerage required to be paid by the laws or regulations of the State of such originating Non-Resident Agent when a similar policy of insurance is originated by a Texas Local Recording Agent covering persons or property in such other State.

Nothing herein shall prevent a Texas Local Recording Agent from dividing with, or paying commissions to, another Texas Local Recording Agent.

Nothing herein shall relieve any insurance company or carrier covered thereby from writing Texas risks through Texas agents as provided in Article 21.09, Insurance Code.

A Licensed Non-Resident Insurance Agent is any person, firm or corporation residing or domiciled in another State and having a Non-Resident Insurance Agent's license as is hereinafter authorized.

Upon application, in such form as the Board of Insurance Commissioners may require, a non-resident of this State who is duly licensed to transact insurance other than life under the laws of the State wherein such applicant resides, if such State does not prohibit residents of this State from acting as insurance agent therein, the Board of Insurance Commissioners may issue to such applicant a Non-Resident Agent's license.

The issuance of a Non-Resident Agent's license shall be for the purpose of permitting a Local Recording Agent of Texas to divide commission with an agent of another State on insurance covering property or persons in this State placed with or through a Local Recording Agent, and to permit an agent of another State, who qualifies and is licensed as a Non-Resident Agent, to inspect and service such risks in Texas, which license shall be subject to the same fees, qualifications, requirements and restrictions as apply to Local Recording Agents of this State, except that an office shall not be maintained in this State by a Non-Resident Agent and all such insurance transacted shall be through licensed Local Recording Agents as provided in Article 21.09 of the Texas Insurance Code; and provided further that a Non-Resident Agent shall transact all matters with the Board of Insurance Commissioners relating to rates and rate engineering and terminology of standard policy forms through Local Recording Agents, and nothing contained herein shall be construed as granting authority to a Non-Resident Agent to transact such matters directly with the Board of Insurance Commissioners; and, except that the Board of Insurance Commissioners, at its discretion, on payment by applicant of the examination fee, may enter into a reciprocal arrangement with the officer having jurisdiction of insurance business in any other State to accept in lieu of the written examination of such an applicant residing therein, a certificate of such officer to the effect that the applicant is licensed as an insurance agent in such State and has complied with its qualification standards in respect to the following:

(a) Experience or training;

(b) Reasonable familiarity with the broad principles of insurance, licensing and regulatory laws, and with provisions, terms, and conditions of the insurance which applicant proposes to transact; and

(c) A fair and general understanding of the obligations and duties of an insurance agent.

Nothing contained herein shall be construed to permit any person or firm who is licensed solely as a

broker in the State of his residence to be granted a Non-Resident license as referred to herein; provided further that nothing contained herein shall be construed to permit a holder of a Non-Resident Agent's license to act as an Excess Agent under the provisions of present Article 21.38 of the Insurance Code or to perform any of the acts permitted thereunder or to permit any person or firm who holds a Non-Resident Agent's license as authorized herein to engage in any form of direct solicitation of insurance within this State. A Non-Resident Agent's license shall be cancelled and not be subject to reissuance when it is found by the Board of Insurance Commissioners that such license was obtained or is being used for the purpose of transacting insurance through a Local Recording Agent in such a manner as to permit a Non-Resident Agent, by subterfuge, to transact insurance as a Local Recording Agent, and in which event the license of the Local Recording Agent likewise shall be cancelled and not be subject to reissuance and all insurance transacted under such arrangement shall be cancelled, provided further that the provisions of Sections 16 and 17, Article 21.14 of the Insurance Code shall apply to such cancellation.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 604, ch. 210, § 1.]

#### Art. 21.11-1. Cancellation of Agency Contracts by Fire and Casualty Insurance Companies

Sec. 1. (a) After an agency contract has been in effect for a period of two years an insurance company writing fire and casualty insurance in this state may not terminate an agency contract with any appointed agent unless the company gives the agent notice in writing of the termination at least six months in advance.

(b) The company shall renew all contracts for fire and casualty insurance for the agent during a period of six months from the effective date of the termination, but in the event any risk shall not meet current underwriting standards of the company, the company may decline its renewal, provided that the company shall give the agent not less than 60 days' notice of its intention not to renew the contract of insurance.

(c) No new business or increases in liability on renewal or in force business shall be written by the agent for the company after notice of termination without the written approval of the company.

(d) Nothing contained in this Act shall ever be deemed or construed to prohibit an amendment or addendum subsequent to the inception date of the original agency agreement providing in such subsequent amendment or addendum that the original agency agreement may be terminated at a sooner time than is required by this Act provided the agent agrees in writing to such sooner termination.

Sec. 2. During the term of the contract the company shall not refuse to renew such business from the agent as would be in accordance with the company's current underwriting standards.

Sec. 3. The provisions of this article shall not apply to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company money due to the company after his receipt of a written demand therefor, or after revocation of the agent's license by the State Board of Insurance; nor to the termination of agents where the policies and the insurance business is owned by the company and not by the agent.

Sec. 4. All existing contracts presently in effect between an agent and a company writing fire and casualty insurance in the State of Texas are subject to the provisions of this article.

Sec. 5. If it is found, after notice and an opportunity to be heard as determined by the board, that an insurance company has violated this article, the insurance company shall be subject to a civil penalty of not less than \$1,000 nor more than \$10,000, and it shall be subject to a civil suit by the agent for damages suffered because of the premature termination of the contract by the company.

[Acts 1971, 62nd Leg., p. 2951, ch. 977, § 1, eff. Aug. 30, 1971.]

#### Art. 21.11-2. Unearned Premiums Under Agency Contracts with Insolvent Insurers

Every agency contract entered into on and after the effective date of this Act by an insurance company writing fire and casualty insurance in Texas shall contain, or shall be construed to contain, the following provision:

Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of delinquency proceedings as defined in Article 21.28, Insurance Code of Texas of 1951, as amended. Subsequent to the commencement of delinquency proceedings, the obligation of the agent to remit premiums shall be confined to premiums earned prior to the commencement of such proceedings. The agent shall not owe or remit to the company or to the Liquidator-Receiver any premiums that are unearned as of the date of the commencement of such delinquency proceedings, and any such unearned premiums in the possession of the agent on such date shall be returned promptly by the agent to the insured who paid them or, with the approval of the insured, be used to purchase new coverage for the insured with a different insurer. [Acts 1973, 63rd Leg., p. 1263, ch. 462, § 1, eff. Aug. 27, 1973.]

#### Art. 21.12. Board May Examine

The Board is hereby authorized, and it is made its duty, at the expense of the company investigating,

to examine at the head office, located within the United States of America, all books, records and papers of such company and also any officers or employees thereof under oath, as to violations of this article or Articles 21.09, 21.10, 21.11, or 21.13 of this code and the Board is further empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the State of Texas to appear before the Board when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of Article 21.13 of this code. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.13. Penalty for Violation

Whenever the Board shall have or receive notice or information of any violation of any provision of Articles 21.09 to 21.12, inclusive, of this code, it shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions, the Board shall immediately revoke its license for not less than three (3) months nor more than six (6) months for the first offense and, for each offense thereafter, for not less than one year; and if any person, agent, firm or corporation licensed by such Board as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any provision of Articles 21.09 to 21.12, inclusive, of this code, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed and shall not thereafter be licensed for any company for one (1) year from date of such revocation. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

##### Classes of Agents

Sec. 1. Insurance agents, as that term is defined in the laws of this State, shall for the purpose of this article be divided into two classes: Local Recording Agents and Solicitors.

*Definitions; Certain Orders, Societies or Associations Not Affected*

Sec. 2. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business and to write, sign, execute, and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public; or a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business, and to forward applications for insurance to the home office of the insurance companies and insurance carriers, where the insurance company's and insurance carrier's general plan of operation in this State provides for the appointment and compensation of agents for insurance and for the execution of policies of insurance by the home office of the insurance company or insurance carrier, or by a supervisory office of such insurance company or insurance carrier, and who maintain an office and a record of such business and the transactions which are involved, and who collect premiums on such business and otherwise qualify and perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

By the term "Solicitor" is meant a person who is a bona fide solicitor in the office of, and engaged in the business of soliciting insurance on behalf of a local recording agent, and who offices with such local recording agent, and who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a solicitor of a local recording agent, who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office.

By the term "Board", as used in this article, is meant the Board of Insurance Commissioners.

Where reference is made in this article to "Company" or "Carrier" such reference means any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier licensed to transact business in the State of Texas other than as excepted herein.

Nothing contained in this article shall be so construed as to affect or apply to orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and the ladies' societies, or ladies' auxiliary to such orders, societies or associations, or any secretary of a Labor Union or organization, or any secretary or agent of any fraternal benefit society, which does not operate at a profit.

## Application for License; To Whom License May be Issued

Sec. 3. (a) When any person, partnership or corporation shall desire to engage in business as a local recording agent for an insurance company, or insurance carrier, he or it shall make application for a license to the State Board of Insurance, in such form as the Board may require. Such application shall bear a signed endorsement by a general, state or special agent of a qualified insurance company, or insurance carrier that applicant or each member of the partnership or each stockholder of the corporation is a resident of Texas, trustworthy, of good character and good reputation, and is worthy of a license.

(b) The Board shall issue licenses to individuals or to individuals engaging as partners in the insurance business, provided the names of all persons interested in any such partnership are named in the license, and each named as active in the business of the partnership qualify, and it be established that none not active have interest in the partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the state line may run and whose residence is in the town in the adjoining state may be licensed, if his business office is being maintained in this state. All persons acting as agent or solicitor for health and accident insurance within the provisions hereof, and who represent only fire and casualty companies, and not life insurance companies, shall be required to procure only one license, and such license as is required under the provisions of this article.

(c) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and

(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code; and

(3) That such corporation will have the ability to pay any sums up to Twenty-Five Thousand Dollars (\$25,000.00) which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an

application for insurance. Such ability shall be proven in one of the following ways:

(a) An errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of Fifty Thousand Dollars (\$50,000.00), with no more than a Two Thousand Five Hundred Dollars (\$2,500.00) deductible feature; or

(b) A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of Twenty-Five Thousand Dollars (\$25,000.00), payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(c) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of Twenty-Five Thousand Dollars (\$25,000.00) with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Board shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.

If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of ninety (90) days from

date of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent.

Should such an unlicensed person acquire shares in such a corporation and not dispose of them within said period of ninety (90) days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its yearly application for renewal license.

Each corporation licensed as a local recording agent shall immediately notify the State Board of Insurance upon any change in its officers, directors or shareholders.

The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.

**Persons other than Licensed Local Recording Agents Who May Share in Profits of Local Recording Agent**

Sec. 3a. (1) Upon the death of a duly licensed local recording agent who is a member of an agency partnership, the surviving spouse and children, if any, of such deceased partner, or a trust for such surviving spouse and children, may share in the profits of such agency partnership during the lifetime of such surviving spouse or such children, as the case may be, if and as provided by a written partnership agreement, or in the absence of any written agreement, if and as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving child or children. Such surviving spouse and any such surviving children or trusts shall not be required to qualify as local recording agents to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent; provided, however, that a duly licensed local recording agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for same, and may operate such interest for

their use and benefit; and such children or trusts may share in the profits of such agency partnership. Such child or children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent.

(2) Upon the death of a duly licensed local recording agent, who is not a member of an agency partnership, unless otherwise provided by the last will of such deceased agent, the surviving spouse and children, if any, of such deceased agent, or a trust for such spouse or children, may share in the profits of the continuance of the agency business of said deceased agent, provided such agency business is continued by a duly licensed local recording agent. Said surviving spouse, trusts or children, may participate in such profits during the lifetime of such surviving spouse and said children. Said surviving spouse, trusts or children shall not be required to qualify as local recording agents in order to participate in the profits of such agency, but shall not do or perform any act of a local recording agent in connection with the continuance of such agency business without first having been duly licensed as a local recording agent; provided, however, that a duly licensed local recording agent who is not a member of an agency partnership may transfer an interest in his agency to his children, or a trust for same, and may operate such interest for their use and benefit; and such children may share in the profits of such local recording agency during their lifetime, and during such time shall not be required to qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agent in connection with such agency business without first having been duly licensed as a local recording agent.

(3) Except as provided in Subsections (1) and (2) above, and as may be provided in Section 6a, Article 21.14 of the Texas Insurance Code, no person shall be entitled to perform any act of a local recording agent nor in any way participate as a partner in the profits of any local recording agent, without first having qualified as a duly licensed local recording agent and having successfully passed the examination required by the Texas Insurance Code; provided, however, that all persons, or trusts for any person, that received licenses before March 1, 1963, as silent, inactive or non-active partners, or who are silent, inactive or non-active partners in an agency which was so qualified before such date, shall continue to receive licenses, or renewals thereof, as partners in such agency or in any successor agency, providing: (a) that such persons are members of an agency in which there is at least one partner who has qualified as a duly licensed local recording agent; (b) that such non-active partner or partners do not actively solicit insurance; and (c) that such agency is not a limited partnership.

## Acting Without License Forbidden

Sec. 4. It shall be unlawful for any person, firm, partnership or corporation or any officer, director or shareholder of a corporation to act as a local recording agent or solicitor in procuring business for any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier, until he or it shall have in force the license provided for herein.

## Active Agents or Solicitors Only to be Licensed

Sec. 5. No license shall be granted to any person, firm, partnership or corporation, either as a local recording agent or solicitor, for the purpose of writing any form of insurance, unless it is found by the State Board of Insurance that such person, firm, partnership or corporation, is or intends to be, actively engaged in the soliciting or writing of insurance from the public generally; that each person or individual of a firm is a resident of Texas, of good character and good reputation, worthy of a license, and is to be actively engaged in good faith in the business of insurance, and that the application is not being made in order to evade the laws against rebating and discrimination either for the applicant or for some other person, firm, partnership or corporation. Nothing herein contained shall prohibit an applicant insuring property which the applicant owns or in which the applicant has an interest; but it is the intent of this Section to prohibit coercion of insurance and to preserve to each citizen the right to choose his own agent or insurance carrier, and to prohibit the licensing of an individual, firm, partnership or corporation to engage in the insurance business principally to handle business which the applicant controls only through ownership, mortgage or sale, family relationship or employment, which shall be taken to mean that an applicant who is making an original application for license shall show the State Board of Insurance that he or it has a bona fide intention to engage in business in which at least twenty-five per cent (25%) of the total volume of premiums shall be derived from persons or organizations other than applicant and from property other than that on which the applicant shall control the placing of insurance through ownership, mortgage, sale, family relationship or employment; and which shall be taken to mean, in the case of application for renewal of license, that at least twenty-five per cent (25%) of applicant's total volume of premiums, during the year preceding such application for renewal, shall have been derived from persons other than applicant and from property other than that on which the applicant controlled the placing of insurance through ownership, mortgage, sale, family relationship or employment. Nothing herein contained shall be construed to authorize a corporation to receive a license as a solicitor.

## Requirement as to Knowledge or Instruction for Local Recording Agent's License

Sec. 5a. (a) Every applicant for local recording agent's license from and after October 1, 1971, shall

upon the successful passage of the examination for local recording agent's license as promulgated by the State Board of Insurance pursuant to the provisions of this Article 21.14 be issued a temporary local recording agent's license. The holder of a temporary local recording agent's license shall have the same authority and be subject to the same provisions of the law as local recording agents until such temporary license shall expire. Each such temporary license so issued shall expire upon the happening of any one of the following, whichever shall first occur, to wit:

- (i) The issuance of a local recording agent's license to such person;
- (ii) One year from date of issuance of the temporary local recording agent's license.

Each such person receiving a temporary license as set out above shall within one (1) year from the issue date of such temporary license complete to the satisfaction of the State Board of Insurance one of the following courses of study:

- (i) Classroom courses in insurance satisfactory to the State Board of Insurance at a school, college, junior college or extension thereof; or
- (ii) An insurance company or agents' association school approved by the State Board of Insurance; or
- (iii) A correspondence course in insurance approved by the State Board of Insurance.

Upon the successful completion of any one of the above courses of study within the one year period, the temporary agent shall then be entitled to receive from the State Board of Insurance his local recording agent's license.

(b) Provided, however, none of the provisions of this section shall apply to the following:

- (1) To any person holding a license as a local recording agent upon the effective date of this Act.
- (2) To any person applying for an emergency local recording agent's license under the provisions of Section 6a of Article 21.14 of the Insurance Code of Texas.
- (3) To any person who holds the designation Chartered Property and Casualty Underwriter (C.P.C.U.) from the American Institute for Property Liability Underwriters.
- (4) To any person who has a bachelor's degree from a four-year accredited college or university with a major in insurance.
- (5) To any person who within two (2) years immediately preceding the filing of his application was a licensed agent in good standing in the state from which he moved to Texas, provided such state makes similar provision for those agents who may move from Texas to such state.
- (6) To any person desiring to apply for a license to solicit and write exclusively all forms of insurance authorized to be solicited and writ-

ten in Texas covering the ownership, operation, maintenance or use of any motor vehicle, its accessories and equipment, designed for use upon the public highways, including trailers and semitrailers. Such person shall continue to apply for and qualify to be licensed under the other provisions of Article 21.14 of the Insurance Code of Texas. Provided, such applicant shall be required to take and pass, to the satisfaction of the State Board of Insurance, an examination, promulgated by said Board, covering only those forms of insurance referred in this paragraph. Provided, when such a person so applies and qualifies, he shall be issued a license which shall contain on the face of said license the following language: "Agent's license to solicit and write all forms of motor vehicle insurance only." An agent holding such a limited license hereby created shall solicit only those forms of insurance hereinabove provided, but shall be subject to all other laws relating to local recording agents.

(c) There is hereby created an Agents' Education Advisory Board whose duties shall be to advise with and make recommendations to the State Board of Insurance concerning the curriculum, course content and schools to be approved under Subsection (a) above. The members of said Advisory Board shall be appointed by the chairman of the State Board of Insurance and shall serve for one year, from September 1 to August 31, or until their successors are appointed. Said Advisory Board shall be composed of the following persons: Two (2) members, each of whom shall be a resident of Texas and have a minimum of ten (10) years' experience as an executive of a fire and casualty company doing business in Texas and whose company operates an agents' school; two (2) members, each of whom shall be a licensed local recording agent in Texas with a minimum of ten (10) years' experience as an agent; and one (1) member who shall be a teacher of insurance at a four-year accredited college or university in Texas. Said Advisory Board shall meet at the offices of the State Board of Insurance upon call of the chairman of the State Board of Insurance and the members of said Advisory Board shall be paid out of the Recording Agents License Fund for their actual and necessary expenses incurred in connection with their attendance at said meetings.

Examination Required; Exceptions

Sec. 6. If applicant for a local recording agent's license has not prior to date of such application, been licensed as a local recording agent, or if the applicant for a solicitor's license has not been licensed as a local recording agent or as a solicitor prior to date of such application, the Board of Insurance Commissioners shall require such applicant to submit to a written examination covering all kinds of insurance or contracts, which license if granted, will permit the applicant to solicit. Any applicant for local recording agent's license who has prior to the date of such

application been licensed as a local recording agent, shall be entitled to a local recording agent's license without examination, provided the other requirements of this article are met. Any applicant for solicitor's license who has been licensed as a local recording agent or as a solicitor prior to date of such application, shall be entitled to a solicitor's license without an examination, provided the other requirements of this article are met.

Death, Disability or Insolvency; Emergency License Without Examination

Sec. 6a. In event of death or disability of a local recording agent or in event a local recording agent is found to be insolvent and unable to pay for premiums coming to his hands as such local recording agent, the Board may issue to an applicant for local recording agent's license an emergency local recording agent's license for a period of not longer than ninety (90) days in any twelve (12) consecutive months without an examination provided the other requirements of this article are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled local recording agent or of an insolvent local recording agent.

Conduct of Examinations; Notice; Manual of Questions and Answers

Sec. 7. All examinations provided by this article shall be conducted by the Board of Insurance Commissioners, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the Board of Insurance Commissioners, of which applicants shall be notified by the Board of Insurance Commissioners in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing, except that the applicant upon notice to the Board of Insurance Commissioners shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the Board of Insurance Commissioners shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

Expiration of License; Renewal

Sec. 8. Every license issued to a local recording agent shall expire one year from the date of its issue, unless an application to qualify for the renewal of any such license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. Every license issued to a solicitor for a local recording agent shall expire on the same date that the license of the local record-

ing agent expires, unless an application to qualify for the renewal of the local recording agent's license and the solicitor's license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the solicitor's license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

*Fees Payable Before Examination*

Sec. 9. Applicants required to be examined shall, at time and place of examination, pay prior to being examined the following fees: For a local recording agent's license a fee of Ten Dollars (\$10.00) and for a solicitor's license a fee of Five Dollars (\$5.00).

*Renewal Fees*

Sec. 10. An applicant for the renewal of a local recording agent's license or for a renewal of a solicitor's license shall pay, at the time the renewal application is filed, a fee of Ten Dollars (\$10.00).

*Issuance of License*

Sec. 11. Whenever the provisions of this article have been complied with, the Board shall issue to any applicant the license applied for where such applicant shall have satisfactorily passed the examination given by the Board of Insurance Commissioners, and who shall possess the other qualifications required by this article.

*Notice to Commissioner of Insurance of Appointment of Local Recording Agent by Insurance Company*

Sec. 12. After a person or firm shall be granted a license as a local recording agent in this state, he shall be authorized to act as such local recording agent, only after and during the time such person or firm has been authorized so to do, by an insurance company or carrier having a permit to do business in this state; and when so authorized each company or carrier or its general or state or special agent making the appointment shall immediately notify the Commissioner of Insurance, on such form as the Commissioner may require, of the appointment. The agent shall be required to pay a fee of \$2.00 for each appointment applied for, which fee shall accompany the notice, and such person or firm shall be presumed to be the agent for such company in this state until such company or its general or state or special agent shall have delivered written notice to the Commissioner of Insurance that such appointment has been withdrawn.

*Application for Solicitor's License*

Sec. 13. When any local recording agent who has been appointed by an insurance carrier having a permit to do business in this State shall desire to appoint a solicitor in the operation of his business, he and a company jointly shall make application for a license for such solicitor to the Board of Insurance Commissioners, in such form as the Board may require.

*Notice to Insurance Commissioners of Solicitor's Appointment; Authority to Solicit*

Sec. 14. No solicitor shall be authorized to solicit insurance until after the Board of Insurance Commissioners shall have been notified by a local recording agent of his appointment, and no local recording agent shall accept business tendered by a solicitor until such local recording agent has given notice to the Board of Insurance Commissioners of such solicitor's appointment as such, and until such solicitor has been licensed by the Board of Insurance Commissioners. No solicitor shall have outstanding at any time a notification of appointment from more than one local recording agent, and a solicitor shall solicit insurance only in the name of and for the account of the local recording agent by whom he has been appointed.

*Fire Insurance in Excess of Value, Writing of Forbidden*

Sec. 15. It shall be unlawful for any local recording agent or solicitor for an insurance company or insurance carrier knowingly to grant, write or permit a greater amount of insurance against loss by fire than the reasonable value of the subject of insurance.

*Suspension, Cancellation or Surrender of License*

Sec. 16. The license of any local recording agent or solicitor may be suspended or canceled by the Board of Insurance Commissioners, after a hearing following not less than ten (10) days' notice shall have been accorded to such local recording agent or solicitor, for violation of this article or of any insurance laws of this State, or if any local recording agent or solicitor shall be guilty of rebating any insurance premium or discriminate as between assureds; or if any local recording agent or solicitor shall fail to account or to pay promptly for premiums coming to his hands as such local recording agent or solicitor, or if it shall be made to appear that such person or firm has obtained a license and is not legally entitled thereto. The license of any local recording agent or solicitor may be voluntarily surrendered upon giving written notice thereof to the Board of Insurance Commissioners, and shall be automatically suspended or cancelled if such local recording agent shall not have outstanding a valid appointment to act as agent for an insurance company or insurance carrier, or if such solicitor shall not have outstanding a valid appointment to act as a solicitor for a local recording agent.

*Notice and Hearing; Witnesses; Books; Records*

Sec. 17. The Board shall neither refuse to issue nor to renew, nor to suspend, nor to revoke, any license provided for in this article for any of the causes enumerated herein, unless the applicant or the person accused has been given at least ten (10) days' notice in writing of the specific charge against him, and shall have been given a hearing before the Board. Upon the hearing of such proceeding the applicant or accused shall have the right to be represented by counsel and the Board shall, if it so requests, be represented by the District Attorney or

the County Attorney of the county in which the hearing is held. The Board shall have the power to summon witnesses and require the production of books, records, and papers for the purpose of such hearing, and to administer oaths. Any District Court or any Judge of such Court in this State, in term time or in vacation, upon application by the accused or of the Board or a member thereof, may, by order duly entered, require the attendance of witnesses and production of relevant books, records and papers before the Board, in any hearing relating to the refusal, suspension, renewal, or revocation or issuing of any license provided for in this article, and may order the Sheriff or any other peace officer of the county wherein said order is made and entered, to serve such process as may be issued, in order to compel the attendance of witnesses before said Board, for which services so rendered by such officer or officers, the fees and mileage of the Sheriff for all witnesses shall be the same as allowed in criminal cases, and shall be paid from the fund of the Board as herein provided for; however, the officers shall make claim for fees as in criminal cases and be paid upon warrant drawn by the Comptroller as in criminal cases. If the applicant or the accused shall prevail at such hearing, the Board shall grant him the proper relief without delay. Any of the investigations, inquiries or hearings thus authorized may be entertained or held by or before any member or members of the Board of Insurance Commissioners, and the finding or order of such member or members, when approved and confirmed by the Board, shall be deemed a finding or order of the Board. The Board or any member thereof may hold any of such hearings provided for in this article, in Austin or in the County seat of the County of the residence of the applicant or the accused, at the discretion of the Board. If the applicant or accused shall fail or refuse to appear for any hearing, after the notice provided herein, the Board shall have the authority to proceed with such hearing, and enter the proper orders the same as if the applicant or accused were present in person.

Appeal

Sec. 18. If the said Board shall refuse an application for any license provided for in this article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit in any of the District Courts of Travis County, Texas, or in any District Court in the County of the applicant's residence, and not elsewhere within twenty (20) days from the date of the order of said Board, such appeal to the District Court shall be by a trial de novo, as such term is commonly used and intended in an appeal from justice court to county court. On the date of the rendition of any such order of the Board, a registered letter containing a copy of such order shall be mailed by the Board to the applicant or the accused involved.

Notice to Last Address

Sec. 19. Where notice to the applicant or accused is provided for in any part of this article, notice by registered mail to his last known address shall be sufficient.

Life, Health and Accident Insurance, Inapplicable to;  
Other Exceptions

Sec. 20. No provisions of this article shall apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:

(a) Any actual full-time home office or salaried traveling representatives of any insurance carrier licensed to do business in Texas.

(b) Any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or interinsurance exchange admitted to do business in Texas.

(c) Any adjuster of losses, and/or inspector of risks, for an insurance carrier licensed to do business in Texas.

(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed insurance company or carrier, or insurance companies or carriers, in a supervisory capacity.

(e) The actual attorney in fact for any Lloyds.

(f) All incorporated or unincorporated mutual insurance companies, their agents and representatives, organized and/or operating under and by authority of Chapters 16 and 17 of this code.

(g) Nothing in this entire article shall ever be construed to apply to any member, agent, employee, or representative of any county or farm mutual insurance company as exempted under Chapters 16 and 17 of this code.

Fees, Disposition of; Appropriations

Sec. 21. The fees herein provided for, when collected, shall be placed with the State Treasurer in a separate fund, which shall be known as the local recording agents' and solicitors' license fund, provided that no expenditures shall be made from said fund except under authority of the Legislature as set forth in the General Appropriation Bill; provided further that no appropriation shall ever be made out of the General Revenue Fund for the purpose of administering this article or any provision thereof.

Rebates or Inducements Forbidden

Sec. 22. It shall be unlawful for any local recording agent to pay, allow, give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement.

ment whatever, not specified in the policy or contract of insurance for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation, other than a duly licensed solicitor appointed by such local recording agent, or to another local recording agent.

It shall be unlawful for any solicitor to pay, allow or give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind, or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation.

Repeal; Laws Not in Conflict Not Affected; Act Cumulative

Sec. 23. All laws or parts of laws pertaining to any phase of the insurance business, which are in conflict with this article, shall be and the same are hereby repealed; but all laws, Civil and Criminal, affecting insurance agents, and/or insurance companies or insurance carriers or the insurance business, which are not in conflict herewith, shall not be affected by the provisions of this article; but this article shall be deemed cumulative of such laws.

#### Violation of Act

Sec. 24. Any person or any member of any firm, or any corporation, or any officer, director, shareholder or employee of any corporation who violates any of the provisions of Sections 4, 15 and 22 of this Article shall be guilty of a misdemeanor, and on conviction in a court of competent jurisdiction, shall be punished by a fine of not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00).

#### Enforcement of Article

Sec. 25. The Attorney General, or any District or County Attorney, or the Board of Insurance Commissioners, may institute any injunction proceeding or such other proceeding to enforce the provisions of this article, and to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business in violation of this article or any of the provisions thereof. The provisions of this section are cumulative of the other penalties or remedies provided for in this article.

#### Administration of Article

Sec. 26. The administration of the provision of this article shall be vested in the Board of Insurance Commissioners, and of the administrative officer of the various counties in which the violation of any provision of this article may occur; and the personnel charged with the direct supervision of the article, except the regularly elected law enforcement officers and their appointees, shall be responsible to and serve at the will of the Board of Insurance Commis-

sioners. It shall be the duty of the Board of Insurance Commissioners and the Attorney General, and of the District and County Attorneys in counties where violations of this article may occur, to see that its provisions are at all times obeyed, and to make such investigations as will prevent or detect the violation of any provision thereof. The Board of Insurance Commissioners shall at once lay before the District or County Attorney of the proper county, any evidence which shall come to its knowledge, of criminality or threatened criminality under this article. In the event of the neglect or refusal of such Attorney to institute and prosecute such violation, or to enforce the other remedies provided by this article, the Board shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon District or County Attorneys. Provided, any person having knowledge of the violation of the provisions of this article may file a complaint for such violation with the proper officers as in other misdemeanor cases. The Board of Insurance Commissioners is given the power and authority, as a requisite for granting or renewing a license to insurance companies or insurance carriers, their local recording agents or solicitors, to require answers under oath to any questions propounded by the said Board or under its authority, and touching any phase of insurance business in the State of Texas in which said insurance company or insurance carrier, or such person or firm, shall be engaged, and to require such person or firm seeking appointment as local recording agent to submit his books, records, and accounts, insofar as they may be material to any phase of insurance business, to examination and inspection by the Board or any person acting under its authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 665, ch. 308, §§ 4, 5; Acts 1963, 58th Leg., p. 961, ch. 383, § 1, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 668, ch. 225, §§ 1 to 4, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2551, ch. 838, §§ 1 to 3, eff. Aug. 30, 1971.]

Acts 1969, 61st Leg., p. 668, ch. 225, §§ 1-4, amended sections 3-5 and 24 of this article, and section 5 provided: "Sec. 5. Precedent of Act in Cases of Conflict.

The rights, power, authority and procedures created in the foregoing sections of this Act shall be deemed to be in addition to all of the rights, authorities and procedures now existing and conferred by the laws of the State of Texas, and any pre-existing Act which tends to hamper or limit the rights, authorities and procedures created in this Act shall be deemed to be superseded by the provisions hereof and, to the extent that any other law is in conflict with, or inconsistent with the provisions hereof, the provisions of the Act shall take precedence and be effective."

#### Art. 21.15. Revocation of Agent's Certificate

Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the Board upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policyholder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof collected by him on any policy of insurance or applica-

tion therefor. The Board shall publish such revocation in such manner as it deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this State for a period of one year.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.15-1. Penalty for Acting As, or Assisting, Aiding or Conspiring With Anyone, Whose License to Act As Insurance Agent or Insurance Solicitor Has Been Revoked or Suspended**

Sec. 1. It shall be unlawful for any person, whose license as an insurance agent or insurance solicitor has been suspended or revoked, to do or perform any of the acts of an insurance agent or insurance solicitor. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by a fine of not more than Five Thousand Dollars (\$5,000) or be imprisoned for not more than two years, or be punished by both fine and imprisonment.

Sec. 2. It shall be unlawful for any insurance agent or insurance solicitor with a license to engage in the business of soliciting and writing insurance to assist, aid or conspire with a person, whose license as an insurance agent or insurance solicitor has been suspended or revoked, to engage in any acts as an insurance agent or insurance solicitor. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or confined in jail for not more than six months, or be punished by both fine and confinement in jail.

[Acts 1969, 61st Leg., p. 2053, ch. 708, § 1, eff. June 12, 1969.]

Acts 1969, 61st Leg., p. 2053, ch. 708, § 2 provided: "This Act shall not preclude any or all other sanctions imposed by the Texas Penal Code."

**Art. 21.15-2. Penalty for Soliciting Without Certificate of Authority**

Whoever for direct or indirect compensation solicits insurance in behalf of any insurance company of any kind or character, or transmits for a person other than himself, an application for a policy of insurance to or from such company, or assumes to act in negotiation of insurance without a certificate of authority to act as agent or solicitor for such company, or after such certificate of authority shall have been canceled or revoked, shall be fined not more than one hundred dollars.

[1925 P.C.]

**Art. 21.15-3. Agent Procuring by Fraudulent Representation; Penalty**

Any such agent or solicitor who knowingly procures by fraudulent representations payment of an obligation for the payment of a premium of insur-

ance, shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

**Art. 21.15-4. Agent or Physician Making False Statement; Penalty**

Any solicitor, agent or examining physician who knowingly or wilfully makes any false or fraudulent statement or representation in or with reference to any application for insurance, shall be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

**Art. 21.15-5. Conversion by Agent or Solicitor; Penalty**

Any insurance agent or solicitor who collects premiums for an insurance company lawfully doing business in this State and who embezzles or fraudulently converts or appropriates to his own use, or with intent to embezzle takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be punished as if he had stolen the same.

[1925 P.C.]

**SUBCHAPTER B. MISREPRESENTATION AND DISCRIMINATION**

**Art. 21.16. Misrepresentation by Policyholder**

Any provision in any contract or policy of insurance issued or contracted for in this State which provides that the answers or statements made in the application for such contract or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of fact to be determined by the court or jury trying such case.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.17. Notice of Misrepresentations**

In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this State, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the representations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days

shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect Article 21.16 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.18. Immaterial Misrepresentation

No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.19. Misrepresenting Loss or Death

Any provision in any contract or policy of insurance issued or contracted for in this State which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled and caused to waive or lose some valid defense to the policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.20. Misrepresentation of Policies

No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

#### Art. 21.21. Unfair Competition and Unfair Practices

##### Declaration of Purpose

Sec. 1. The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress),<sup>1</sup> by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

##### Definitions

Sec. 2. When used in this Act:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal ex-

change, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and life insurance counselors.

(b) "Board" shall mean the Board of Insurance Commissioners of this state.

##### Unfair Methods of Competition or Unfair and Deceptive Acts or Practices Prohibited

Sec. 3. No person shall engage in this state in any trade practice which is defined in this Act as, or determined pursuant to this Act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

##### Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined

Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading;

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, cir-

cular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure any person engaged in the business of insurance;

(4) Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(5) False Financial Statements.

(a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive;

(b) Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer;

(6) Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, company stock or other capital stock, or benefit certificates or shares in any corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Provided, however, that nothing in this subsection shall be construed as prohibiting the issuing or delivery of participating insurance policies otherwise authorized by law.

(7) Unfair Discrimination.

(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the bene-

fits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(8) Rebates.

(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(b) Nothing in clause 7 or paragraph (a) of clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

Power of Board

Sec. 5. The Board shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in

order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 3 of this Act.

Hearings, Witnesses, Appearances, Production of Books and Service of Process

Sec. 6. (a) Whenever the Board shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in Section 4, and that a proceeding by it in respect thereto would be to the interest of the public, it shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than five days after the date of the service thereof;

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the Board requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Board shall permit any person to intervene, appear and be heard at such hearing by counsel or in person;

(c) Nothing contained in this Act shall require the observance at any such hearing of formal rules of pleading or evidence;

(d) The Board, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which it deems relevant to the inquiry. The Board, upon such hearing, may, and upon the request of any party, shall cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the Board shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the District Court of Travis County or the county where such party resides, on application of the Board, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof;

(e) Statements of charges, notices, orders, and other processes of the Board under this Act may be served by anyone duly authorized by the Board, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such

statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

Cease and Desist Orders

Sec. 7. (a) If, after such hearing under the terms of Section 6 of the Act, the Board shall determine that the method of competition or the act or practice in question is defined in Section 4 of this Article, or rules or regulations issued under this Article, or in Section 17.46 of the Business & Commerce Code, as amended, and that the person complained of has engaged in such method of competition, act or practice of violation of this Article or rules and regulations issued under this Article or of the Deceptive Trade Practices—Consumer Protection Act (Sections 17.41 et seq., Business & Commerce Code), as specified in Section 17.46 of the Business & Commerce Code, it shall reduce its findings to writing and issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(b) Until a petition appealing from such order shall have been filed in a District Court of Travis County, Texas, in accordance with Subchapter F of Chapter 21 of the Insurance Code of this state,<sup>2</sup> or any amendment thereof, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part any order issued under this section.

(c) Any person who violates the terms of a cease and desist order under this section shall be given notice to appear and show cause, at a hearing to be held in conformity with Section 6 of this Article, why he should not forfeit and pay to the state a civil penalty of not more than \$1,000 per violation and not to exceed a total of \$5,000. In determining whether or not a cease and desist order has been violated, the Board shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the order.

(d) An order of the Board awarding civil penalties under Subsection (c) of this section applies only to violations of this order incurred prior to the awarding of the penalty order.

No Relief from Liability Under Other Laws

Sec. 8. No order of the Board under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

Certain Words Prohibited from Appearing on Policies of Insurance

Sec. 9. (a) Notwithstanding any other provision of the Insurance Code (Acts 1951, 52nd Legislature, page 868, Chapter 491) to the contrary, it is hereby declared to be unlawful for any company engaged in

the business of life, accident or health insurance to issue or deliver in this state a policy containing the words "Approved by the Board of Insurance Commissioners" or words of a similar import or nature.

Penalty

Sec. 10. Any person who violates a cease and desist order of the Board under Section 7, while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Texas a sum not to exceed Fifty Dollars (\$50.00), which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed Five Hundred Dollars (\$500.00).

Provisions of Act Additional to Existing Law

Sec. 11. The powers vested in the Board by this Act shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

Immunity from Prosecution

Sec. 12. If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the Insurance Code of this state. Any such individual may execute, acknowledge and file in the office of the Board a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

Rules and Regulations

Sec. 13. (a) The State Board of Insurance is authorized to promulgate and may promulgate and enforce reasonable rules and regulations and may order such provision as is necessary in the accomplishment of the purposes of this Article and Article 21.20, including, but not limited to, such express provision within the purposes of these Articles as it deems necessary or as is required to affect necessary uniformity with the laws of other states or the United States or in conformity with the adopted procedures of the National Association of Insurance Commissioners notwithstanding any previous definition or interpretation of terms used in these Articles had in or derived from the common law or other statutory law of this state.

(b) A petition may be submitted to the Board to adopt, amend, or repeal a regulation. The petition must be signed by 100 interested persons and supported by evidence that a particular act or practice has been or could be false, misleading or deceptive to the insurance buying public, or that an act or practice declared to be false, misleading, or deceptive by a regulation of the Board is not in fact false, misleading, or deceptive. Within 30 days after receipt of the petition the Board must either deny the petition or initiate hearing proceedings under this section.

(c) On denial of the petition the Board must state the reason or reasons for denial in writing. Denial is expressly authorized if the action sought by the petition would destroy uniformity with the laws of other states or of the United States or would not be in conformity with the adopted procedures of the National Association of Insurance Commissioners.

(d) If in response to the petition the Board determines to hold a hearing, such hearing shall be open to the public and any person may present testimony, data, or other information in writing or orally to the Board regarding the acts or practices under consideration.

(e) A person aggrieved by the denial of the hearing under Subsection (b) of this section or by the adoption, amendment, or repeal of a regulation or failure to issue a regulation under this section, may file a petition in a district court of Travis County for a declaratory judgment on the validity or applicability of a regulation adopted, amended, or repealed under this section or on the denial of a hearing under Subsection (b) of this section. The Board shall be made a party to the action. In a suit under this subsection the district court may issue injunctions.

(f) The action of the Board in adopting, amending, repealing, or failing to adopt a regulation or denying a hearing may be invalidated only if it is found that it:

- (1) violates a constitutional or state statutory provision;
- (2) exceeds the statutory authority of the Board;

(3) is arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion;

(4) is so vague that it does not establish sufficiently definite standards with which conduct can be conformed;

(5) is made on unlawful procedure; or

(6) is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record as submitted.

#### Administrative Class Action

Sec. 14. (a) In connection with the issuance of a cease and desist order as provided in Section 7 of this Article or upon application of any aggrieved person, the Board may, after notice and hearing as provided in Section 6 of this Article, in connection with the issuance of a cease and desist order resulting from a finding that an insurer has engaged in a method of competition, act or practice in violation of this Article, rules or regulations issued under this Article, or Section 17.46, Business & Commerce Code, as amended, or upon finding by the Board that the aggrieved person and persons similarly situated were induced to purchase a policy of insurance as a result of the insurer engaging in a method of competition, act or practice in violation of this Article, rules or regulations issued under this Article or Section 17.46, Business & Commerce Code, as amended, the Board may require the insurer to account for all premiums collected for policies issued during the immediately preceding two years in connection with such acts in violation of this Article and require: (i) such insurer to give notice to all persons from whom such premiums were collected, and (ii) to refund the total of all premiums collected from each such person, electing to accept a premium refund in exchange for cancellation of the policy of insurance issued. Premiums so refunded shall be net of policy benefits actually paid by such insurer while the policy of insurance was in force. The Board shall specify a reasonable time within which the insurer shall be required to make such premium refunds.

(b) If an insurer fails to comply with the Board's requirement to refund such premiums within the time specified, the Board may, in addition to any other sanctions provided for in the Insurance Code and other applicable laws, report such failure to the Attorney General and request the Attorney General to file a suit to enforce the Board's requirement for refund of premiums. Venue for such suit shall lie in the District Court of Travis County, Texas, and upon finding by the court that such requirement of the Board was lawfully entered and that the insurer has failed to comply with such requirement, the Court shall enter an appropriate order to enforce such Board order. The Court may enforce its order through contempt proceedings.

(c) Compliance or attempts to comply with the Board's requirement to refund premiums shall be an offer to compromise and shall be inadmissible as

evidence. Compliance or attempts to comply with the Board's requirement for refund of premium shall not be considered as admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the Board's requirements of refund or premium may be introduced by the defendant for the purpose of establishing good faith or to show compliance with the Board's requirement.

#### Injunctions

Sec. 15. (a) If the Board has reason to believe that any person in the insurance business in this state is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this Article or rules or regulations issued under this Article or by Section 17.46 of the Business & Commerce Code, as amended, and that proceedings would be in the public interest, the Board may request the Attorney General to bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of such method, act, or practice.

(b) An action brought under Subsection (a) of this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, is doing business, or in the district court of the county where the transaction occurred or any substantial portion of the transaction occurred, or in a district court of Travis County. The court may issue appropriate temporary or permanent injunctions, and the injunctions shall be issued without bond.

(c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the Attorney General, on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by Article 17.46 of the Business & Commerce Code, as amended, this Article, or rules or regulations issued under this Article, may request a civil penalty of not more than \$2,000 per violation and not to exceed a total of \$10,000 to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or restoration of money or property, real or personal, which may have been acquired by means of any act or practice restrained. Damages may not include any damages incurred beyond a point two years prior to the institution of the action.

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation not to exceed \$50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued,

and in such cases, the Attorney General with prior notice to the Board, acting in the name of the state, may petition for recovery of civil penalties under this section.

(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

#### Relief Available to Injured Parties

Sec. 16. (a) Any person who has been injured by another's engaging in any of the practices declared in Section 4 of this Article or in rules or regulations lawfully adopted by the Board under this Article to be unfair methods of competition and unfair and deceptive acts or practices in the business of insurance or in any practice defined by Section 17.46 of the Business & Commerce Code, as amended, as an unlawful deceptive trade practice may maintain an action against the company or companies engaging in such acts or practices.

(b) In a suit filed under this section, any plaintiff who prevails may obtain:

- (1) three times the amount of actual damages plus court costs and attorneys' fees reasonable in relation to the amount of work expended;
- (2) an order enjoining such acts or failure to act;
- (3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the amount of work expended.

(d) In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.

#### Class Actions

Sec. 17. (a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Section 4 of this Article or by the rules and regulations lawfully adopted by the Board under this Article or by any practice defined by Section 17.46 of the Business & Commerce Code, as amended, as an unlawful deceptive trade practice, the Board may request the Attorney General to bring a class action, or the individual damaged may bring an action on behalf of himself and others similarly situated, to recover damages and relief as provided in this section.

(b) A plaintiff who prevails in a class action under this section may recover:

- (1) court costs and attorneys' fees reasonable in relation to the amount of work expended in addition to actual damages;

(2) an order enjoining the act or failure to act;

(3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was brought by an individual plaintiff in bad faith or for the purpose of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the work expended and court costs.

(d) In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.

(e) An action under this section may not be maintained if an administrative class action under Section 14 of this Article has been initiated or has resulted in a final determination regarding the same acts or practices and the same defendant in the action under this section.

#### Class Action: Procedure

Sec. 18. (a) The court shall permit one or more members of a class to sue or be sued as representative parties on behalf of the class only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

(b) An action may be maintained as a class action if the prerequisites of Subsection (a) of this section are satisfied and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on ground generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only

individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of controversy concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of a class action.

(c) In construing this section, the courts of Texas shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure, as amended.

(d) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action. An order under this subsection may be altered or amended before a decision on the merits. An order determining that the action may or may not be brought as a class action is an interlocutory order which is appealable and the procedures provided in Rule 385, Texas Rules of Civil Procedure, apply.

(e) If the action is permitted as a class action, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(f) The notice shall contain a statement that:

(1) the court will exclude the member notified from the class if he so requests by a specified date;

(2) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(3) any member who does not request exclusion, if he desires, may enter an appearance through counsel.

(g) A class action may not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in such manner as the court directs.

(h) When appropriate, an action may be brought or maintained as a class action with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall be construed and applied accordingly.

(i) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The court shall direct to

the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(j) In the conduct of a class action the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members or to the Attorney General of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

(5) dealing with similar procedural matters.

(k) The filing of a suit under this section tolls the statute of limitations for bringing a suit by an individual under Section 16 of this Article. An order of the court denying the bringing of a suit as a class action does not affect the ability of an individual to bring the same or a similar suit under Section 16 of this Article.

#### Preliminary Notice

Sec. 19. (a) At least 30 days prior to the commencement of a class action suit for damages under Section 17 of this Article, the prospective plaintiff must notify the intended defendant of his complaint and make demand that the defendant provide relief to the prospective plaintiff and others similarly situated. A copy of the notice must also be sent to the commissioner of insurance.

(b) The notice must be in writing and sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, the intended defendant's principal place of business in this state, or if neither will effect notice, to the office of the Secretary of State of Texas.

(c) An action for injunctive relief under Section 17 of this Article may be commenced without compliance with Subsection (a) of this section. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with the provisions of Subsection (a) of this section, the plaintiff may amend his complaint without leave of court to include a request for damages.

(d) No damages may be awarded to a class under Section 17 of this Article if within 30 days of receipt of the notice the intended defendant furnished the plaintiff, by certified or registered mail, return receipt requested, a written offer of settlement. The offer of settlement must include a statement that:

(1) all others similarly situated have been adequately identified or a reasonable effort to identify such others has been made, and a description of the class so identified and the method employed to identify them;

(2) all persons so identified have been notified that upon request the intended defendant will provide relief to them and all others similarly situated, and a complete explanation of the relief being afforded and a copy of the notice or communication which the intended defendant is providing to the members of the class;

(3) the relief being afforded the consumer has been, or if said offer is accepted by the consumer, will be given within a stated reasonable time; and

(4) the practice complained of has ceased.

(e) Attempts to comply with the provisions of this section by a person receiving a demand shall be an offer to compromise and shall be inadmissible as evidence. Attempts to comply with a demand shall not be considered an admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the provisions of this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of this section.

Damages: Defense

Sec. 20. No award of damages may be given in any class action filed under Section 17 of this Article if the defendant:

(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any error; and

(2) made restitution of any consideration received from any member of the class.

Venue

Sec. 21. Any action brought under this Article shall be commenced in a district court of Travis County, Texas, if the State Board of Insurance is a party thereto.

Voluntary Compliance

Sec. 22. (a) In the administration of this Article the Board may accept assurance of voluntary compliance with respect to any act or practice which violates this Article or regulations issued under this Article or any act declared to be unlawful in Section 17.46 of the Business & Commerce Code, as amended, from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The

assurance shall be in writing and shall be filed with the Board.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this Article or regulations issued under this Article, or Section 17.46, Business & Commerce Code, as amended, restore to any person in interest any money which may have been acquired by means of acts or practices which violate this Article or regulations issued under this Article, or Section 17.46, Business & Commerce Code, as amended.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this Article or regulations issued under this Article or Section 17.46, Business & Commerce Code, as amended. However, unless an assurance has been rescinded by agreement, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this Article or regulations issued under this Article or Section 17.46, Business & Commerce Code, as amended.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurance of voluntary compliance shall in no way affect individual rights of action under this Article, except that the right of individuals with regard to money received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

Payment of Penalties, Costs, Etc.

Sec. 23. Those civil penalties, premium refunds, judgments, compensatory judgments, individual recoveries, orders, class action awards, costs, damages, or attorneys' fees which are assessed or awarded as provided in this Article shall be paid only from the capital or surplus funds of the offending insurance company, and no such payments shall take precedence over, be in priority to, or in any manner be applicable to the provisions of Article 21.28-B, Texas Insurance Code, known as the Loss Claimant's Priorities Act, Article 21.28-C, Texas Insurance Code, known as the Property and Casualty Insurance Guaranty Act, Article 21.28-E, Texas Insurance Code, known as the Texas Life, Health and Accident Guaranty Act, any other similar insurance guaranty act hereafter enacted by the Texas Legislature, or Article 21.39-A, Texas Insurance Code, known as the Asset Protection Act, and such special statutes and the priorities of funds created thereby shall be exempt from the provisions of this Article.

Application

Sec. 24. No remedy or civil penalty shall lie or exist by reason of any act or omission occurring prior to the effective date of this Act. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1957, 55th Leg., p. 401, ch. 198; Acts 1969, 61st Leg., p. 2051, ch. 706, § 1,

eff. June 12, 1969; Acts 1973, 63rd Leg., p. 335, ch. 143, § 2(a), eff. May 21, 1973; Acts 1973, 63rd Leg., p. 336, ch. 143, §§ 2(b), 2(c), eff. May 21, 1973.]

<sup>1</sup> 15 U.S.C.A. §§ 1011-1015.

<sup>2</sup> Article 21.44.

#### Art. 21.21A. Discrimination; Penalty

No insurance company doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of or payment of premiums or rates charged for policies of life or endowment insurance or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any officer or agent of such company violating any provision of this article shall be fined not less than one hundred nor more than five hundred dollars. [1925 P.C.]

#### Art. 21.21B. Misrepresentations of Policy Terms; Penalty

Sec. 1. No Life, Health or Casualty Insurance Corporation including corporations operating on the cooperative or assessment plan, Mutual Insurance Companies, and Fraternal Benefit Associations or Societies, and any other societies or associations authorized to issue insurance policies in this State, and no officer, director, representative or agent therefor or thereof, or any other person, corporation or co-partnership, shall issue or circulate or cause or permit to be issued or circulated, any illustrated circular or statement of any sort, misrepresenting the terms of any policy issued by any such corporation or association or any certificate of membership issued by any such society or corporation, or other benefits or advantages permitted thereby, or any misleading statement of the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies, or certificate of mem-

bership or class of such certificate, misrepresenting the true nature thereof. Nor shall any such corporation, society or association, or officer, director, agent or representative thereof, or any other person, make any misleading representations or incomplete comparisons of policies or certificates of membership to any person insured in such corporation, association or society, or member thereof, for the purpose of inducing or tending to induce, such person to lapse, forfeit or surrender his said insurance or membership therein.

Sec. 2. If any person shall violate any of the provisions of Section 1 hereof, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than Twenty-five (\$25.00) Dollars nor more than Five Hundred (\$500.00) Dollars, or be imprisoned in the county jail not more than sixty (60) days, or by both such fine and imprisonment.

Sec. 3. The Commissioner of Insurance, upon giving five (5) days' notice by registered mail, and upon hearing had for that purpose, may forfeit the charter, permit or license to do business of any society, association or corporation violating the provisions hereof, and may forfeit likewise the certificate of any person to write such insurance, where a certificate is required by law.

[Acts 1931, 42nd Leg., p. 332, ch. 199.]

#### Art. 21.21-1. Unauthorized Insurers False Advertising Process Act

##### Purpose of Act

Sec. 1. (a) The purpose of this Act is to subject to the jurisdiction of the State Board of Insurance of this state and to the jurisdiction of the courts of this state insurers not authorized to transact business in this state which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The Legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this Act. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing, it exercises its powers to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340,<sup>1</sup> which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided herein to be in addition to any existing powers of this state.

(b) The provisions of this Act shall be liberally construed.

Definitions

Sec. 2. (a) The term "foreign or alien insurer" shall mean any insurance company organized under the laws of any other state or territory of the United States or any foreign country.

(b) "Unfair Trade Practice Act" shall mean the Act of 1957, 55th Legislature, page 401, Chapter 198, also known as Article 21.21 of the Insurance Code.

(c) "Residents" shall mean and include person, partnership or corporation, domestic, alien or foreign.

Notice to Domiciliary Supervisory Official

Sec. 3. No unauthorized foreign or alien insurer shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state any advertisement, estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practice Act, and whenever the State Board of Insurance shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be its duty to give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this Section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

Action by State Board of Insurance

Sec. 4. If after thirty (30) days following the giving of the notice mentioned in Section 3 such insurer has failed to cease making, issuing, or circulating such false misrepresentations or causing the same to be made, issued or circulated in this state, and if the State Board of Insurance has reason to believe that a proceeding by it in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in Section 5, the said Board shall take action against such insurer under the Unfair Trade Practice Act.

Service Upon Unauthorized Insurer

Sec. 5. (a) Any of the following acts in this state, affected by mail or otherwise, by any such unauthorized foreign or alien insurer:

- (1) The issuance or delivery of contracts of insurance to residents of this state,
- (2) the solicitation of applications for such contracts,

(3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or

(4) any other transaction of insurance business, is equivalent to and shall constitute an appointment of such insurer of the Commissioner of Insurance of this state and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in Section 3 hereof under the provisions of the Unfair Trade Practice Act, or in any action, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices, or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this state, upon such insurer.

(b) Service of a statement of charges and notices under said Unfair Trade Practice Act shall be made by any deputy or employee of the State Board of Insurance delivering to and leaving with the Commissioner of Insurance or some person in apparent charge of his office, two (2) copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under said Act provided, shall be made by delivering and leaving with the Commissioner of Insurance, or some person in apparent charge of his office, two (2) copies thereof. The Commissioner shall forthwith cause to be mailed by registered mail one (1) of the copies of such statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance herewith are filed with the Commissioner of Insurance in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(c) Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in Subsection (b) of this Section be valid if served upon any person within this state who on behalf of such insurer is:

- (1) Soliciting insurance; or
- (2) Making, issuing, or delivering any contract of insurance; or

(3) Collecting or receiving in this state any premium for insurance; and a copy of such statement of charges, notices or process is sent within ten (10) days thereafter by registered mail by or on behalf of the Commissioner of Insurance to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the Commissioner of Insurance in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(d) No cease or desist order or judgment by default under this Section shall be entered until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(e) Service of process and notice under the provisions of this Act shall be in addition to all other methods of service provided by law, and nothing in this Act shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

Separability

Sec. 6. [Omitted].

Short Title

Sec. 7. This Act may be cited as the Unauthorized Insurers False Advertising Process Act.

[Acts 1961, 57th Leg., p. 235, ch. 122.]

<sup>1</sup> 15 U.S.C.A. §§ 1011-1015.

**Art. 21.21-2. Unfair Claim Settlement Practices**

Short Title

Sec. 1. This Act shall be known as the Unfair Claim Settlement Practices Act.

Prohibited Practices

Sec. 2. No insurer doing business in this state under the authority, rules and regulations of Subchapter G of Chapter 3 or Subchapters A, B and C of Chapter 5 of the Insurance Code, as amended,<sup>1</sup> shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without cause and performed with such frequency as determined by the State Board of Insurance as provided for in this Act, shall constitute unfair claim settlement practices:

(a) Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(c) Failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear;

(e) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

(f) Failure of any insurer to maintain a complete record of all the complaints which it has received during the preceding three years or since the date of its last examination by the commissioner of insurance, whichever time is shorter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint. For the purposes of this subsection, "complaint" means any written communication primarily expressing a grievance; or

(g) Committing other actions which the State Board of Insurance has defined, by regulations adopted pursuant to the rule-making authority granted it by this Act, as unfair claim settlement practices.

<sup>1</sup> Article 3.70-1 et seq. and art. 5.01 et seq.

Periodic Reports

Sec. 3. If it shall be found by the State Board of Insurance, based on complaints of unfair claims settlement practices as defined in Section 2 of this Act, that an insurer is substantially out of line and should be subjected to closer supervision with respect to such practices, it may require such insurer to file a report at such periodic intervals as the board deems necessary. The board shall also devise a statistical plan for such periodic reports, which is to contain a minimum of the following information:

(a) The total number of written claims filed, including the original amount filed for by the insured and the classification by line of insurance of each individual written claim, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter;

(b) The total number of written claims denied, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter;

(c) The total number of written claims settled, including the original amount filed for by the insured, the settled amount, and the classification of line of insurance of each individual settled claim, for the past 12 month period or

from the date of the insurer's last periodic report, whichever time is shorter;

(d) The total number of written claims for which lawsuits were instituted against the insurer, including the original amount filed for by the insured, the amount of final adjudication, the reason for the lawsuit and the classification by line of insurance of each individual written claim, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter; and

(e) All information required by Subsection (f) of Section 2 of this Act.

For the purposes of this section, "written claim" shall include only those claims reduced to writing and filed by a Texas resident with an insurer as defined in Section 2 of this Act. The board may, at any time, rescind the requirement to file periodic reports if it finds that such requirement is no longer necessary to accomplish the objectives set out in this Act.

Investigation Procedures

Sec. 4. (a) The commissioner is authorized to hire additional employees and examiners as needed for the effective enforcement of the provisions of this Act.

(b) The commissioner shall compile the information received from an insurer pursuant to Section 3 of this Act in such a manner as to enable him to compare it to a minimum standard of performance which shall be promulgated by the State Board of Insurance. If the commissioner, after such comparison is made, finds that the insurer falls below the minimum standard of performance, he shall cause an investigation to be made of said insurer as to the reason, if any, for said substandard performance.

(c) The commissioner shall also provide for the receiving and processing of individual complaints alleging violations of this Act by both insurers who are required to make periodic reports and those who are not required to make such reports. If the commissioner in his complaint experience determines that the number and type of complaints against an insurer do not meet the board's minimum standard of performance and/or are out of proportion to those against other insurers writing similar lines of insurance, he shall cause an investigation to be made of the respective insurer.

Hearings

Sec. 5. (a) Upon the receipt of the results of an investigation instituted pursuant to Section 4 of this Act, the commissioner shall review the results and shall determine whether, in the light of the standards set out in Section 2 of this Act, further action is required. If the commissioner deems further action necessary, he shall set a date for a public hearing to review the alleged violations of this Act. At such public hearings, the accused insurer shall be permit-

ted to present his case with the assistance of counsel. Any evidence as to numbers and types of complaints or claims prepared by the commissioner, pursuant to Sections 3 and 4 of this Act, shall be admissible in evidence in such hearings or any judicial proceeding pursuant thereof. Notice as to the date of such hearing and the nature of the charges is to be given the insurer not later than 30 days prior to the date set for the hearing. Such hearings are to be conducted pursuant to the rules and regulations promulgated by the State Board of Insurance and the provisions of the Insurance Code, as amended. Provided, that no insurer shall be deemed in violation of this Act solely by reason of the numbers and types of such complaints or claims.

(b) Any insurer which is affected by any ruling or action of the commissioner shall have the right to have such ruling or action reviewed by the State Board of Insurance by making an application to the board as provided for in Article 1.04 of the Insurance Code, as amended.

Penalties: Judicial Review: Attorneys' Fees

Sec. 6. (a) The State Board of Insurance, upon finding an insurer in violation of the provisions of this Act, shall issue a cease and desist order to said insurer directing it to stop such unlawful practices. If the insurer refuses or fails to comply with said order, the board shall have the authority to revoke or suspend the insurer's certificate of authority as provided for in the Insurance Code, as amended. The board shall also have the authority to limit, regulate, and control the insurer's line of business, the insurer's writing of policy forms or other particular forms, and the insurer's volume of its line of business or its writing of policy forms or other particular forms. The board shall use the above authority to the extent it deems necessary to obtain the insurer's compliance to its order. The attorney general shall offer his assistance if requested by the board to enforce the board's orders.

(b) Any insurer affected by a ruling or order of the board pursuant to the provisions of this Act may appeal same by filing suit in any of the district courts of Travis County, Texas, within 20 days from the date of the order of said board. Such appeal shall be by trial de novo. Reasonable attorneys' fees shall be awarded the board if judicial action is necessary for the enforcement of its orders.

Specific Application

Sec. 7. The provisions of this Act are to specifically apply to the following insuring organizations: proprietorships, partnerships, corporations and unincorporated associations, stock and mutual life, health, accident, fire, casualty, fire and casualty, hail, storm, title, and mortgage guarantee companies; mutual assessment companies; local mutual aid associations; local mutual burial associations; statewide mutual assessment companies; stipulated

premium companies; fraternal benefit societies; group hospital service organizations; county mutual insurance companies; Lloyds; reciprocal or inter-insurance exchanges and farm mutual insurance companies.

**Rules and Regulations**

Sec. 8. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

**Unconstitutional Application Prohibited**

Sec. 9. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

[Acts 1973, 63rd Leg., p. 735, ch. 319, § 1, eff. Aug. 27, 1973.]

Sections 2 to 4 of the 1973 Act provided:

"Sec. 2. Other Remedies. The provisions of this Act are in no way to reduce or eliminate any other remedies available to the State Board of Insurance under the laws of this state.

"Sec. 3. Control Over Conflicts. The provisions of the Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

"Sec. 4. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**SUBCHAPTER C. RELATING TO LIFE, HEALTH AND ACCIDENT INSURANCE AND BENEFITS**

**Art. 21.22. Exemption of Insurance Benefits From Seizure Under Process**

Sec. 1. No money or benefits of any kind to be paid or rendered on a weekly, monthly or other periodic or installment basis to the insured or any beneficiary under any policy of insurance issued by a life, health or accident insurance company, including mutual and fraternal insurance, or under any plan or program of annuities and benefits in use by any employer, shall be liable to execution, attachment, garnishment or other process or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered, except for premiums payable on such policy or a debt of the insured secured by a pledge thereof.

Sec. 2. Wherever any policy of insurance or plan or program of annuities and benefits mentioned in Section 1 of this article shall contain a provision against assignment or commutation by any beneficiary thereunder of the money or benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such beneficiary of such money or benefits or rights in violation of such provision shall be wholly void.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.23. Forfeiture of Beneficiary's Rights**

The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case, the nearest relative of the insured shall receive said insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.24. Policies to Contain Entire Contract**

Every policy of insurance issued or delivered within this State by any life insurance company doing business within this State shall contain the entire contract between the parties, and the application therefor may be made a part thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS**

**Art. 21.25. Mergers and Consolidations of Stock Insurers**

**Authority to Merge or Consolidate; Procedure**

Sec. 1. Any two (2) or more insurance corporations doing a similar line of business, may merge or consolidate. The procedure for, the effect of, and the rights and duties of creditors, shareholders, and the corporations involved in such merger or consolidation shall be governed by applicable provisions of the "Texas Business Corporation Act," as amended, insofar as the same are not inconsistent with the provisions of this Act, and the Insurance Code of the State of Texas. Wherever in said "Texas Business Corporation Act" some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such Act is applicable to insurance corporations under the provisions hereof.

**Approval of Directors and Shareholders**

Sec. 2. Before any such proposed plan of merger or consolidation is submitted to the shareholders for their approval, as provided under the "Texas Business Corporation Act," it shall first be approved by the Boards of Directors of the two or more corporations planning to merge or consolidate; and thereafter such plan shall be submitted to the shareholders of each of the corporations which are parties to the plan at separate regular or special meetings of the shareholders of the corporations, called in the manner provided by the By-Laws of the respective corporations and may be approved by the affirmative vote of the holders of two-thirds ( $\frac{2}{3}$ ) of the shares of the capital stock of each of such corporations.

Filing; Hearing; Approval of Commissioner; Charter and License; Corporations Organized under Laws of other States

Sec. 3. After such plan has been approved as provided in Section 2 hereof, it shall then be filed

with the Commissioner of Insurance. The Commissioner shall hold a hearing within fifteen (15) days of filing the plan and shall then give approval in writing to each insurer involved within fifteen (15) days after the hearing unless he finds the plan contrary to law or that it would not be in the best interests of the policyholders affected by the plan and would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere. The Commissioner of Insurance may extend the fifteen (15) day period within which he may affirmatively approve or disapprove such plan when such action is concurred in by representatives of applicants to the merger or consolidation. In the event of disapproval of the plan, he shall specify in detail his reasons therefor. The merger shall be effective upon the date specified in the proposed plan of merger; or where consolidation results, the new corporation shall be issued a charter and license upon submission of proper articles of incorporation to the Commissioner of Insurance, and upon his approval together with approval of the Attorney General in accordance with the procedure now required for the issuance of a new charter, and proof that it has capital and surplus of not less than the capital and surplus of the corporation involved in such consolidation having the largest capital and surplus, and it shall be effective upon such date of issuance. A merger or consolidation involving a corporation organized under the laws of another state shall not be effective until the merger or consolidation has been approved by the proper official of the domiciliary state of the out-of-state corporation, when such approval is required under the laws of such domiciliary state.

#### Outstanding Policies

Sec. 4. All policies of insurance outstanding against any corporation so merged or consolidated shall be assumed by the new or surviving corporation on the same terms under the same conditions as if such policies had continued in force in the original corporation, and such insurer shall carry out the terms of such policy and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such merger or consolidation.

#### Investments; Acquisition of Excess Real Estate; Branch Offices

Sec. 5. In the event of the merger or consolidation of any two or more insurance corporations under the provisions of this Act, all investments of such corporations so absorbed, that were authorized when made by the laws of the state in which such insurance corporations were organized, as proper securities or assets, including real property, for investment of funds of an insurance corporation and which are taken over by such new or surviving corporation by virtue of a merger or consolidation under the provisions of the Act, shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or surviving corporation by virtue of a merger or consolidation under the provisions of this Act, provided

such investments are approved by the Commissioner of Insurance in this state, and the same are taken over on terms satisfactory to said Commissioner; provided, however, that in the event the new or surviving corporation acquires by virtue of such merger or consolidation real estate or property beyond or in excess of that permitted by the applicable Articles pertaining to owning or holding real estate, such new or surviving corporation shall sell and dispose of all such excess real estate within the time specified in such applicable Articles; provided that the new or surviving corporation shall not hold such property for a longer period unless it shall procure a certificate from said Commissioner that its interests will materially suffer by the forced sale thereof; in which event the time for the sale thereof may be extended to such time as the Commissioner shall direct in such certificate. Provided further, that this Section will not preclude the designation and use of such acquired excess real estate as branch offices in accordance with the applicable provisions of this Code.

#### Treasury Stock; Retirement and Cancellation

Sec. 6. If, after any merger or consolidation is completed, the new or surviving corporation acquires its own shares as a result of distribution of shares to the shareholders of the other corporation or corporations which are being merged or consolidated, or acquires its own stock as a result of purchase of stock of the dissenting shareholders, such stock may be held as treasury stock for a period of one (1) year, after which time such corporation shall retire and cancel such stock by proper charter amendment, if the same has not previously been reissued.

#### Purchase of Outstanding Stock; Conditions and Limitations

Sec. 7. One insurance corporation may purchase or contract to purchase all or part of the outstanding stock of another insurance corporation as a part of a plan of merger or consolidation. The provisions contained in Article 3.39 of the Insurance Code which limits investments in the corporate stock of another corporation shall not apply provided that such purchase or contract to purchase shall be subject to the following conditions or limitations:

(a) The intention to merge or consolidate is evidenced by a resolution adopted by the Board of Directors of the purchasing corporation at or prior to the purchase of such stock or the execution of a contract to purchase such stock; and

(b) The purchasing corporation shall initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized; and

(c) No purchase of stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such merger or consolidation has been approved by the appropriate regulatory

authority of the domiciliary state of each of the corporations being so merged or consolidated, where the laws of such state require such an approval; nor shall any binding liability accrue on the contract to purchase such stock unless and until the merger or consolidation has been so approved; and

(d) The merger or consolidation becomes effective on or before December 31st in the year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first; and

(e) In the event the purchasing company does not initially purchase or contract to purchase all of the stock of the corporation being merged or consolidated, such purchasing corporation shall at least fifteen (15) days prior to the effective date of such merger or consolidation offer to purchase the remaining shares at the price paid on the initial purchase or offered in any contract to purchase, under subparagraph (a) hereof; except, however, that if such offer is not accepted prior to the effective date of the merger or consolidation the non-acceptance of the offer shall not affect the merger or consolidation except as otherwise provided by law; and

(f) In no event shall such sums actually paid out for the purchase of stock include the minimum capital, minimum surplus, and policy reserves required by law for such corporations.

*Affect on Anti-Trust Statutes*

Sec. 8. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1961, 57th Leg., p. 593, ch. 284, § 1.]

**Art. 21.26. Purchase of Stock for Total Assumption Reinsurance**

Sec. 1. Nothing in this Act or in the Insurance Code shall be construed as in any way affecting or limiting the right of a life insurance corporation organized or operating under Chapter Three (3) or Chapter Eleven (11) of the Insurance Code of the State of Texas to purchase or to contract to purchase all or part of the outstanding shares of another life insurance corporation, domestic or foreign, doing a similar line of business for the purpose of reinsuring all of the business of such other insurance corporation and assuming all of the liabilities and taking over all of the assets of such other corporation. The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:

(a) The intention to reinsure is evidenced by a resolution adopted by the Board of Directors of the reinsuring corporation at or prior to the purchase of such stock or the execution of a contract to purchase such stock; and

(b) The reinsuring corporation shall initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary under the laws of the state in which the reinsured company was organized to vote an approval of a total assumption reinsurance agreement; and

(c) No purchase of stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such reinsurance agreement has been approved by the appropriate regulatory authority of the domiciliary state of the corporation to be reinsured, where the laws of such state require such an approval; and

(d) The reinsurance agreement becomes effective on or before December 31st in the year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first; and

(e) In the event the reinsuring corporation does not initially purchase or contract to purchase all of the stock of the corporation to be reinsured, such reinsuring corporation shall at least fifteen (15) days prior to the effective date of such reinsurance agreement offer to purchase the remaining shares at the price paid on the initial purchase or offered in the initial contract to purchase, pursuant to subparagraph (a) hereof, except, however, that if such offer is not accepted prior to the effective date of the reinsurance agreement the non-acceptance of the offer shall not affect the reinsurance agreement except as otherwise provided by law; and

(f) In no event shall such sums actually paid out for the purchase of stock include the minimum capital, minimum surplus and policy reserves required by law of the reinsuring corporation.

Sec. 2. All investments of such reinsured corporation shall be subject to Section 5 of Article 21.25 hereof, as if such corporation had been merged or consolidated.

Sec. 3. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state. [Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 697, ch. 319, § 1; Acts 1961, 57th Leg., p. 593, ch. 284, § 2.]

**Art. 21.27. Plan for Changing Stock Insurance Company to Mutual Insurance Company**

Sec. 1. Any stock insurance company which is a domestic company, as defined by law, may become a

mutual company owned and controlled by its policyholders, and to that end may carry out a plan for the acquisition of shares of its capital stock; provided, however, that such plan:

(1) Shall enable each stockholder to dispose of the same proportion of his holdings at the same price per share and on the same terms;

(2) Shall have been adopted by a vote of a majority of the directors of such corporation;

(3) Shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose;

(4) Shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose of policyholders, each insured in at least One Thousand (\$1,000.00) Dollars and whose insurance shall then be in force and shall have been in force for at least one (1) year prior to such meeting; but no such meeting shall be called for such purpose nor shall such plan be submitted to the policyholders unless and until the plan shall first have been approved and adopted by a majority of the directors of such corporation and approved and adopted by its stockholders representing at least a majority of the capital stock of the corporation at meetings of the directors and stockholders, respectively, duly called and held for the purpose of considering the adoption of such plan, notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting in a sealed envelope, postage prepaid, addressed to such policyholders at their last known postoffice addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan; provided, however, that policyholders may vote in person, by proxy or by mail; that all votes shall be cast by ballot and the Chairman of the Board of Insurance Commissioners shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualification of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the corporation the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Chairman of the Board of Insurance Commissioners; that all necessary expenses incurred by the Chairman of the Board of Insurance Commissioners shall be paid by the corporation as certified to by him; and

(5) Shall have been submitted to the Chairman of the Board of Insurance Commissioners

and shall have been approved by him in writing, provided that every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Chairman of the Board of Insurance Commissioners and provided that neither such plan, nor any such payment, shall be approved by the Chairman of the Board of Insurance Commissioners, unless at the time of such approvals respectively the corporation, after deducting the aggregate sum appropriated by such plan, to be paid in cash or other assets of the corporation, for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets sufficient to equal the entire liability of the corporation, including the net values of its outstanding contracts computed as required by law, and also all funds, contingent reserves, and a surplus over and above all liabilities of not less than Five Hundred Thousand (\$500,000.00) Dollars.

#### Acquisition of Shares in Trust; Appointment of Trustees

Sec. 2. If any insurance corporation shall determine to become a mutual insurance corporation in accordance with the provisions of Section 1 of this article, it may, in carrying out any plan to that end under such provisions, acquire any shares of its own stock by gift, bequest or purchase; and until all of such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to three trustees and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote, until all the capital stock of such corporation is acquired, and the purchase price therefor, including all annuity bonds issued on account thereof shall be fully paid off, whereupon the entire capital stock shall be retired and cancelled, and thereupon the corporation shall be and become a mutual insurance corporation without capital stock, and shall thereafter be controlled by the laws of Texas governing such mutual companies. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under Section 1 of this article. Said trustees shall file with the corporation a verified acceptance of their appointments and declaration that they will faithfully discharge their duty as such trustees. All dividends and other sums received on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are, or may become, policyholders of said corporation, and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation and be appor-

tionable accordingly, as a part of said surplus among said policyholders.

#### Annuity Bonds in Payment of Stock

Sec. 3. The plan provided for in Section 1 of this article may provide that part or all of the purchase price of any part or all of the shares of stock of the corporation acquired by the corporation under the provisions of such plan may be paid by the corporation issuing its annuity bonds to be payable in such annual amounts, and to run for such number of years as may be provided for in said plan, provided that such annuity bonds issued by any such company shall expressly provide, on the face thereof, that they shall be payable only out of the surplus of the company remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets, as is provided by Article 11.16 of this code with respect to advances made to mutual life insurance companies; and provided that not more than three-fourths ( $\frac{3}{4}$ ) of the net earnings of the corporation during any calendar year shall be used or applied to the payment of such annuities.

With the approval of the Chairman of the Board of Insurance Commissioners, the corporation issuing such annuity bonds, or any life insurance company may invest its funds in such annuity bonds, provided that no such company shall have so invested at any one time an amount in excess of ten (10%) per cent of its total admitted assets.

#### Distribution of Dividends

Sec. 4. All dividends or earnings accruing to the corporation as the result of the acquisition of any or all of the shares of its stock under the provisions of this article, shall be annually distributed among the policyholders of the corporation under terms and conditions to be approved by the Chairman of the Board of Insurance Commissioners.  
[Acts 1951, 52nd Leg., p. 868, ch. 491.]

### Art. 21.28. Liquidation, Rehabilitation, Reorganization or Conservation of Insurers

#### Definitions

Sec. 1. For the purposes of this Article:

(a) "Insurer" means and includes capital stock companies, reciprocal or interinsurance exchanges, Lloyd's associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code of 1951, and all other organizations, corporations, or persons transacting an insurance business, unless such insurers are by statute specifically, by naming

this Article, exempted from the operation of this Article.

(b) "Delinquency proceeding" means any proceeding commenced in any court of this State against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(c) "Assets" means all property, real or personal, whether specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons, or a limited class or classes of persons. The word "assets," as used in this Article, includes all deposits and funds of a special or trust nature.

(d) "Liquidator" means the person designated by the Board of Insurance Commissioners as receiver, liquidator, rehabilitator, or conservator of all insurers as defined herein.

(e) "Board" means the Board of Insurance Commissioners of the State of Texas.

(f) "Court," unless the same clearly appears to the contrary from the text of this article, means the court in which the delinquency proceeding is pending.

#### General Procedures

Sec. 2. (a) Receiver Taking Charge. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the Board of Insurance Commissioners as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

(b) Title in Receiver. The property and assets of such insurer shall be in the custody of the court as of the date of the commencement of such delinquency proceedings. The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. Such title of the receiver shall relate back to the date of the commencement of the delinquency proceedings unless the court shall otherwise provide. The filing or recording of such an order in any record office of the State shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded by such insurer.

(c) Rights Fixed. The rights and liabilities of any such insurer and of its creditors, policyholders, members, officers, directors, stockholders, agents, and all other persons interested in its estate, shall, unless otherwise directed by the court, be fixed as of the date of the commencement of the delinquency proceedings, subject, however, to the provisions of Sec-

tion 3 with respect to the rights of claimants holding contingent claims, and as otherwise expressly provided in this Article.

(d) Bonds. The receiver shall be responsible, on his official bond hereinafter provided for, for all assets coming into his possession. The court may require an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy liquidator, or other assistant or employee appointed by or under the authority of this Article.

(e) Conducting of Business. Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer.

(f) Inventory. An inventory in duplicate of the insurer's assets shall be prepared forthwith by the receiver, one of which shall be filed in the office of the Board and one in the office of the clerk of the court having jurisdiction, which inventories shall be open to inspection.

(g) Disposal of Property; Settling Claims. The receiver may, subject to the approval of the court, (1) sell or otherwise dispose of the real and personal property, or any part thereof, of an insurer against whom a proceeding has been brought under this Article, and (2) sell or compound all doubtful or uncollectible debts, or claims owed by or owing to such insurer, including claims based upon an assessment levied against a member of a mutual insurer, reciprocal exchange, or an underwriter at Lloyds. Whenever the amount of any such debt or claim owed by or owing to such insurer or the value of any item of property of the insurer does not exceed Five Hundred Dollars (\$500), exclusive of interest, the receiver may compromise or compound such debt or claim or sell such property upon such terms as he may deem for the best interests of said insurer without obtaining the approval of the court. The receiver may, subject to the approval of the court, sell or agree to sell, or offer to sell, any assets of such an insurer to such of its creditors who may desire to participate in the purchase thereof, to be paid for, in all or in part, out of dividends payable to such creditors, and, upon the application of the receiver, the court may designate representatives to act for such creditors in the purchase, holding and/or management of such assets, and the receiver may, subject to the approval of the court, advance the expenses of such representatives against the security of the claims of such creditors.

(h) Depositories. All money collected by the receiver shall be forthwith deposited in any bank or banks in this State which are members of the Federal Deposit Insurance Corporation. The funds collected or realized from the assets of each insurer

shall be kept separate and apart from all other funds. Whenever any account in any such bank exceeds the maximum amount insured by said Federal Deposit Insurance Corporation, the receiver is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit upon approval of the Board.

#### Claims

Sec. 3. (a) Time for Filing. Where a liquidation, rehabilitation, or conservation order has been entered in a proceeding against an insurer under this Article, all persons who may have claims against such insurer shall present proof of the same to the receiver at a place specified by him within a period of time to be specified by the court, in no event, however, less than ninety (90) days nor more than one (1) year after the date of the entry of the order specifying such time. The receiver shall notify all persons who may have claims against such insurer as disclosed by its books and records, to present proof of the same to him within the time as fixed. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(b) Late Filing. Proofs of claims may be filed subsequent to the date specified but in no event later than one (1) year after the entry of the court's order specifying the time for filing claims. Claims filed subsequent to the date specified in the court's order, but prior to the expiration of one (1) year after the entry of such order, may participate only in future dividends. Claims which are not filed within the expiration of such one-year period shall not participate in any distribution of the assets by the receiver.

(c) Proof Necessary. A proof of claim shall consist of a written statement under oath signed by the claimant, setting forth the claim, the consideration therefor, and whether any, and if so, what securities are held therefor, and any right of priority of payment or other specific rights asserted by the claimant, and whether any, and if so, what payments have been made thereon, and such other matters as may be required by the court, and that the sum claimed is justly owing from the insurer to the claimant. Whenever a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. After the filing of such instrument, the receiver may in his discretion permit the claimant to substitute a true copy of such instrument, until the final disposition of the claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

(d) Contingent Claims. No contingent claim shall share in a distribution of the assets of an insurer in liquidation except that such claim shall be considered if properly presented, and may be allowed to

share where (1) such claim becomes absolute against the insurer on or before the last day fixed for filing of proof of claims against the assets of such insurer, or (2) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent. For the purposes of this Article, "contingent claim" means a claim for which the right of action is dependent upon the occurrence or nonoccurrence of some future event which may or may not happen.

(e) Third Party Claims. Where a liquidation, rehabilitation or conservation order has been entered in a proceeding against an insurer under this Article, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim with the receiver, regardless of the fact that such claim may be contingent, and such claim may be approved (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such persons shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. No judgment against an insured taken after the date of the commencement of the delinquency proceedings shall be considered in the proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings shall be considered as conclusive evidence in the proceeding, either of the liability of such insured to such person upon such cause of action, or of the amount of damages to which such person is therein entitled.

(f) Offsets. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any claim or proceeding under this Article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (g).

(g) No Offsets. No offsets shall be allowed in favor of any person, however, where (1) the obligation of the insurer to such person would not at the date of the commencement of the delinquency proceedings or as otherwise provided in Section 2(c), entitle him to share as a claimant in the assets of such insurer, or (2) the obligation of the insurer to such person was purchased by or transferred to such person subsequent to the commencement of the delinquency proceedings or with a view of its being used as an offset, or (3) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or reciprocal exchange, or underwriters at Lloyds, or to pay a balance upon a subscription to the capital stock of a

stock insurance corporation, or (4) the obligation of such person is as a trustee or fiduciary.

(h) Action on Claims. The receiver shall have the discretion to approve or reject any claim filed against the insurer. Objections to any claim not rejected may be made by any party interested, by filing the objections with the receiver, who shall forthwith present them to the court for determination after notice and hearing. Upon the rejection of each claim either in whole or in part, the receiver shall notify the claimant of such rejection by written notice. Action upon a claim so rejected must be brought in the court in which the delinquency proceeding is pending within three (3) months after service of notice; otherwise, the action of the receiver shall be final and not subject to review. Such action shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases.

#### Actions

Sec. 4. (a) Injunctions. Upon an application by the receiver, the receivership court may, with or without notice, issue an injunction restraining the insurer named in the order, its officers, directors, stockholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, attorneys-in-fact, associate, deputy, substitute attorneys-in-fact, and all other persons from the transaction of its business or the waste or disposition of its property, or requiring the delivery of its property and/or assets to the receiver subject to the further order of the court.

(b) Other Orders. Such court may at any time during a proceeding under this Article issue such other injunctions or orders as may be deemed necessary to prevent interference with the receiver or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions; or the obtaining of preferences, judgments, attachments, garnishments, or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(c) No Preferences. Any claim, judgment, lien or preference against the insurer or its receiver obtained, after the date of receivership, in derogation of the terms of any such injunction or order of the receivership court may be denied by the receiver until proof of the justness of such claim, judgment, lien, preference or demand is made before and approved by the receivership court.

(d) Pending Lawsuits. No judgment or order rendered by any court of this State in any action pending by or against the delinquent insurer after the commencement of delinquency proceedings shall be binding upon the receiver unless the receiver shall have been made a party to such suit.

(e) One Year Extension. The receiver shall not be required to plead to any suit in which he may be a proper party plaintiff or defendant, in any of the courts in this State until one (1) year after the date

of his appointment as receiver, and the provisions of Articles 2310 and 2311 of the Revised Civil Statutes of Texas of 1925, as amended, shall not apply to insolvent insurance companies being administered under this Article.

(f) New Lawsuits. The court of competent jurisdiction of the county in which the delinquency proceedings are pending under this Article shall have venue to hear and determine all action or proceedings instituted after the commencement of delinquency proceedings by or against the insurer or receiver.

#### Voidable Transfers

Sec. 5. (a) Transfers or Liens Voidable. Any transfer or lien upon the property or assets of an insurer which is made or created within four (4) months prior to the commencement of delinquency proceedings under this Article, with the intent of giving to any creditor or enabling him to obtain a greater percentage of his debt than of any other creditor of the same class, and which is accepted by such creditor, having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Personal Liability. Every director, officer, agent, employee, stockholder, member, attorney-in-fact, associate, substitute or deputy attorney-in-fact, underwriter, subscriber, and any other person acting on behalf of such insurer, who shall be concerned in any such prohibited act or deed, and every person receiving thereby property of such insurer, or the benefit thereof, shall be personally liable therefor, and shall be bound to account to the receiver for the benefit of the creditors of the insurer.

(c) Avoiding and Recovery. The receiver in any proceeding under this Article, may avoid any transfer of, or lien upon the property or assets of an insurer which any creditor, stockholder or member of such insurer might have avoided, and may recover the property so transferred or its value from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the commencement of proceedings under this Article. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as above specified.

#### Priority of Claims for Wages

Sec. 6. All wages actually owed to employees of an insurer against whom a proceeding under this Article is commenced, for services rendered within three (3) months prior to the commencement of such proceeding not exceeding Three Hundred Dollars (\$300) to each employee shall be paid prior to the payment of every other debt or claim, and in the discretion of the court may be paid as soon as practicable after the proceeding has been commenced, except that at all times there shall be reserved such funds as will be sufficient for the expenses of administration by the receiver.

#### Assessments

Sec. 7. (a) Application. Within four (4) years from the date of an order of rehabilitation, or liquidation, of a domestic insurer, the receiver may make an application to the court to levy an assessment against the members of a mutual insurer, or the underwriters or members of a reciprocal exchange, or the underwriters at Lloyds. Such application shall set forth the reasonable value of the assets of such insurer, its probable liabilities, and the probable necessary assessment, if any, to pay all possible claims and expenses in full, including expenses of administration and collection.

(b) Levy. Upon such notice as may be designated by the court, the court shall proceed to consider such report and may levy one or more assessments. Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. No such assessment shall be levied against any member or subscriber with respect to any policy which contains a nonassessable or noncontingent liability provision or provisions and which has been issued under authority granted by the Board.

(c) Collection. After the entry of such an order of assessment and the expiration of the time for appeal, the receiver shall proceed to collect such assessments, and for the purpose of such collection may bring suit for the same in any court of competent jurisdiction in the county in which such delinquency proceeding is pending.

(d) Provisions Cumulative. The provisions of this Section are cumulative of any other remedies for the levy and collection of assessments.

#### Distribution of Assets

Sec. 8. (a) Payments to Creditors. Under the direction of the court the receiver shall make payments and dividends to the creditors.

(b) Interest. Interest shall not accrue on any claim subsequent to the date of the commencement of delinquency proceedings.

(c) Foreign Claimants. If any claimant of another state or foreign country shall be entitled to or shall receive a dividend upon his claim out of a statutory deposit or the proceeds of any bond or other asset located in such other state or foreign country, then such claimants shall not be entitled to any further dividend from the receiver until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall have received an equal dividend upon their claims; and after such equalization, such claimants shall be entitled to share in the distribution of further dividends by the receiver, along with and like all other creditors of the same class, wheresoever residing.

(d) Setoff by Receiver. Upon the declaration of a dividend, the receiver shall apply the amount of such

dividend against any indebtedness owed to the insurer by the person entitled to such dividend.

(e) Unclaimed Funds. Unclaimed dividends on approved claims, unclaimed returned assessments, and all other unclaimed funds subject to distribution to claimants, policyholders or other persons, remaining in the receiver's hands after payment of the final dividend shall be delivered to the Board at the time the receivership is closed, or in the event a final dividend is paid less than ninety (90) days prior to the closing of the receivership, the receiver may continue the bank account or accounts of such receivership from which such funds might be paid, for a period of time not to exceed ninety (90) days from the date of the closing of said receivership, before the same are so delivered to the Board. Such funds shall be deposited by the Board in trust in a special account to be maintained with the State Treasurer.

(f) Recovery by Owner. On receipt of satisfactory written and verified proof of ownership within two (2) years from the date such funds are so deposited with the State Treasurer, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled thereto, drawn on the State Treasurer.

(g) Declaration of Abandonment. After such funds have remained unclaimed for two (2) years, the Liquidator may initiate action to have them declared to be abandoned, and the property of the State Board of Insurance. Such action shall be commenced by the filing by the Liquidator, in the court of competent jurisdiction in the county in which the delinquency proceeding is, or was pending, of a notice of his intention to declare such funds to be abandoned, and that he is claiming the same as the property of the State Board of Insurance. Such action may be for all or any part of such funds accumulated in any one particular receivership. Such notice shall state the name or names of the person or persons entitled thereto, his or their last known address, and the nature or source and amount of the fund or funds. Upon the filing of such notice by the Liquidator, the court shall set a date for the hearing of the application, and shall make notation thereon of the date of such hearing, which date shall be at least twenty (20) days subsequent to the date of the filing of said notice. A copy of said notice, with the judge's notation thereon shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had thereon. Notice of the filing of the application shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in the county where the application is pending. Such notice shall be addressed to the true owners of unclaimed funds in the particular receivership involved in the application and shall state generally that a hearing shall be had on the date specified for the purpose of declaring such funds to be abandoned and the property of the State Board of Insurance. Upon the hearing on such application

of the Liquidator, proof to the satisfaction of the court:

(1) That such funds, or the checks therefor, had previously been sent by the Receiver to the last known address of the person or persons entitled thereto;

(2) That such funds, or the checks therefor, had been returned unclaimed or that the check or checks therefor had not been cashed;

(3) That the funds had been delivered to the Board as required by Subsection (e) above;

(4) That such money remained unclaimed with the Board for two (2) years; and

(5) That notice of the filing of the application has been published as herein provided, shall be prima facie evidence of the intention of the person or persons entitled thereto to abandon the same, and that the Board is the rightful owner thereof. Upon such finding by the court, the court shall be authorized to render judgment accordingly. Upon receipt of such judgment, the Board shall certify such fact to the Comptroller of Public Accounts, who shall issue proper warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that such funds derived through any one insurer need not be kept separate from such funds derived through any other insurer.

(h) Use of Abandoned Funds. Such funds so deposited by the Board in accordance with Subsection (g) above may be expended by the Liquidator, with the consent of the Board, for the purpose of paying expenses of the office of the Liquidator and/or Receiver that are not properly chargeable to any one receivership or conservatorship estate, and for the purpose of financing continued operation of any receivership or conservatorship then being administered by the Liquidator as Receiver or Conservator, when in the discretion of the Board it appears to be in the best interest of such receivership or conservatorship estate that it not be closed, and that additional administration be had thereon. Any funds so applied from this source to another receivership or conservatorship estate are to be repaid from the assets of the receivership or conservatorship estate to which they were applied before additional dividends are paid in any such receivership, or before the conservatorship is released for continued operation.

Settlement of Claims; Abandoned Funds; Re-opening  
of Receiverships

Sec. 8A. Any and all assets other than cash remaining in the receiver's hands after payment of the final dividend may be conveyed, transferred or assigned to the State Insurance Liquidator and his successors in office, to be handled as a trust. The State Insurance Liquidator shall have authority to convey, transfer, and assign any assets, including

causes of action, judgments, and claims, and to settle or release causes of action, judgments, claims, and liens on such terms and for such amounts as he deems for the best interest of such trust, whether such assets have heretofore or may hereafter come into his hands. From proceeds derived from any such assets the Liquidator shall defray the costs incident to the sale, settlement, release or other transaction whereby such proceeds are obtained, and deliver the remainder to the Board to be deposited by it in trust in a special account to be maintained with the State Treasurer to be handled, disposed of and used as follows:

An order directing disposition of such funds may be made by a court of competent jurisdiction of Travis County, Texas, upon application of the Liquidator, after notice and hearing. Notice shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had on the Liquidator's application, and notice shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in Travis County. Such notice shall state the amount of the funds and the receivership from which they were derived. It shall be addressed to all persons having an interest, as claimant or otherwise, in the assets of the particular receivership involved in the application, and shall state generally that a hearing shall be had on the date specified for the purpose of determining the disposition to be made of such funds, including a declaration that such funds are abandoned and the property of the State Board of Insurance.

If the court finds that funds derived from any receivership are sufficient to justify re-opening of the receivership and payment of a dividend, then such may be ordered, but otherwise, if such funds are insufficient for that purpose, the court may declare such funds abandoned and a certified copy of such judgment will be authority for the Comptroller of Public Accounts to issue a Warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that funds derived from one insurer need not be kept separate from funds derived through any other insurer.

Such funds may be used as provided in Section 8(h) of this Article.

#### Closing

Sec. 9. (a) Excess Assets—Stock Companies. When the receiver shall have made provision for unclaimed dividends and all of the liabilities of a stock insurance company, he shall call a meeting of the stockholders of the insurer by giving notice thereof in one (1) or more newspapers in the county where the principal office of the insurer was located, and by written notice to the stockholders of record at their last known address. At such meeting, the stockholders shall appoint an agent or agents to take

over the affairs to continue the liquidation for benefit of the stockholders. Voting privileges shall be governed by the insurer's bylaws. A majority of the stock shall be represented at the agent's appointment. Such agent or agents shall execute and file with the court such bond or bonds as shall be approved by it, conditioned on the faithful performance of all the duties of the trust. Under order of the court the receiver shall then transfer and deliver to such agent or agents for continued liquidation under the court's supervision all assets of insurer remaining in his hands, whereupon the receiver and the Board, and each member and employee thereof, shall be discharged from any further liability to such insurer and its creditors and stockholders; provided, however, that nothing herein contained shall be so construed as to permit the insurer to continue in business as such, but the charter of such insurer and all permits and licenses issued thereunder or in connection therewith shall be ipso facto revoked and annulled by such order of the court directing the receiver to transfer and deliver the remaining assets of such insurer to such agent or agents.

(b) Excess Assets—Other Companies. After the receiver shall have made provision for unclaimed dividends and all of the liabilities of any insurer other than a stock insurance company, he shall dispose of any remaining assets as directed by the receivership court.

(c) No Limitation. Each receivership or other delinquency proceeding prescribed by this Article shall be administered continuously hereunder for whatever length of time is necessary to effectuate its purposes. No arbitrary period prescribed elsewhere by the laws of Texas limiting the time for the administration of receiverships or of corporate affairs generally shall be applicable thereto.

(d) Reopening. If after the receivership shall have been closed by final order of the court, the liquidator shall discover assets not known to him during receivership, he shall report his findings to the court. It shall be within the discretion of the court as to whether the value of the after-discovered assets shall justify the reopening of the receivership for continued liquidation.

#### Reinsurance

Sec. 10. (a) Reinsurer's Liability. If the receiver has claims under policies covered by reinsurance, there shall be no diminution of the liability of the reinsurer because of the delinquency proceeding against the delinquent company, regardless of any provisions in the reinsurance contract to the contrary.

(b) Notice to Reinsurer. The liquidator or receiver shall give written notice to the affected reinsurers of the pendency of a claim against the receiver under a policy covered by reinsurance within a reasonable time after such claim is filed in the delinquency proceeding, and during the pendency of such

claim any affected reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where the claim is to be adjusted any defense or defenses which it may deem available to the delinquent company, the liquidator or the receiver. Subject to court approval, the expense thus incurred shall be chargeable against the delinquent company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the delinquent company solely as a result of the defense undertaken by the assuming insurer.

(c) Provided, however, that Article 6.16 of the Insurance Code of 1951, Acts Regular Session of the Fifty-second Legislature, 1951, Chapter 491, page 868, shall remain in full force and effect and shall govern as to those insurance companies affected thereby.

#### Evidence in Records

Sec. 11. (a) Records Admitted. All books, records, documents and papers of any delinquent insurer received by the liquidator and held by him in the course of the delinquency proceedings, or certified copies thereof, under the hand and official seal of the Board and/or liquidator, shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Board and/or liquidator that the same was received from the custody of the delinquent insurer or found among its effects.

(b) Certificates. The liquidator shall have the authority to certify to the correctness of any paper, document or record of his office, including those described in (a) of this section, and to make certificates under seal of the Board and certified by the liquidator certifying to any fact contained in the papers, documents or records of the Liquidation Division; and the same shall be received in evidence in all cases in which the originals would be evidence.

(c) Prima-facie Evidence. Such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima-facie evidence of the facts disclosed thereby.

#### Liquidator, Assistants, Expense Accounts

Sec. 12. (a) Liquidator, Bond. The liquidator herein named shall be appointed by a majority of the Board of Insurance Commissioners, and shall be subject to removal by a majority of said Board, and before entering upon the duties of said office, shall file with the Board of Insurance Commissioners a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board of Insurance Commissioners for the benefit of injured parties, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.

(b) Appointments, Expenses. The Board shall have the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary. The payment of such compensation and all expenses of liquidation shall be made by the liquidator out of funds or assets of the insurer on approval of the Board. An itemized report of such expenses, sworn to by the liquidator and approved by the Board, shall be presented to the court from time to time, which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

(c) Filing Reports. Said liquidator shall file reports with the Board of Insurance Commissioners upon its request showing the operation, receipts, expenditures, and general condition of any organization of which he may have charge at that time, and, upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. He shall also file a final report of each organization which he has liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

#### Legislative Appropriations

Sec. 12A. It is the sense of the Legislature, as necessary to state policy, that facilities be immediately and continually available to meet any or all of the requirements of preparing for, placing in, continuing or completing any liquidation, rehabilitation, reorganization or conservation of insurers, and in order to make such provision and to provide that the Liquidator and employees be used for other Insurance Department duties when not involved in liquidation or conservation matters, the Legislature may make provisions for the Liquidator and employees and their expenses, in whole or in part, by making appropriations therefor, or by appropriating or permitting use of funds, other than funds or assets of insurers being liquidated, rehabilitated, reorganized or conserved, which are received by or made available to the Board, or by establishing disappearing or partially or wholly reimbursable revolving funds in the Appropriation Acts, notwithstanding any other provision of Article 21.28 of Chapter 21 of the Insurance Code.

The provisions of this Act are cumulative of existing law and in the event of conflict the provisions of this Act shall govern.

#### Ancillary Delinquency Proceedings

Sec. 13. Whenever under the laws of this State, a receiver is to be appointed in delinquency proceed-

ings for an insurer domiciliary in another state, a court of competent jurisdiction in this State shall, on the petition of the Board of Insurance Commissioners of this State, appoint the liquidator herein provided as ancillary receiver in this State of such insurer. The Board shall file such petition (a) if it finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b) if ten (10) or more persons resident in this State, having claims against such insurer, file a petition or petitions in writing with the Board, requesting the appointment of such ancillary receiver. Such ancillary receiver shall have the right to sue for and reduce to possession the assets of such insurer in this State, and shall have the same powers and be subject to the same duties with respect to such assets, as are possessed by a receiver of a domiciliary insurer under the laws of this State. The remaining provisions of this Article shall be applicable to the conduct of such ancillary proceedings.

#### Contracts with Foreign Receiver

Sec. 14. In cases where a receiver of any delinquent insurer has been appointed both in Texas and in some other state, the Texas receiver, either domiciliary or ancillary, may, under supervision of the Texas receivership court, contract with the receiver in such other state for the administration of the affairs of their respective receiverships in any manner consistent with this Article which will enable the respective receivers to coordinate their activities in the interest of efficiency and economy.

#### Borrowing on the Pledge of Assets

Sec. 15. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this Article the receiver may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the receiver, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The receiver shall be under no obligation personally or in his official capacity as receiver to repay any loan made pursuant to this section.

#### Conflicts of Law

Sec. 16. In the event of conflict between the provisions of this Article and the provisions of any existing law, the provisions of this Article shall prevail, and all laws, or parts of law, in conflict with the provisions of this Article, are hereby repealed to the extent of such conflict.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 737, ch. 267; Acts 1961, 57th Leg., p. 997, ch. 435, § 1; Acts 1963, 58th Leg., p. 1309, ch. 499, § 1; Acts 1965, 59th Leg., p. 1520, ch. 661, § 1, eff. Aug. 30, 1965.]

### Art. 21.28-A. Insurer Delinquencies and Prevention of Insurer Delinquencies; Supervision of Insurers and Proceedings, Conservatorships, Liquidations—Additional and Alternate Provisions

#### Purposes and Findings

Sec. 1. It is the sense of the Legislature that existing provisions and conditions of law and the ordered procedures of law are sometimes not adequate, nor appropriate under all circumstances, in respect of a need to remedy the financial condition and the management of certain insurers. Neither are the laws adequate for the rehabilitation of insurers who voluntarily request rehabilitation. A void exists in the laws with respect to those insurers most susceptible to rehabilitation or the regaining of solvency. The Legislature finds and determines that the placing of an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, one or more of the following values or assets:

- (a) the value of the insurance account or in-force business of the insurer,
- (b) the value of the insurer as a going concern,
- (c) the value of its agency force, and
- (d) the value of other of its assets.

The Legislature declares that such values and assets should be preserved if the circumstances of the insurer's financial condition warrant an attempt to conserve or rehabilitate such insurer and such rehabilitation or conservation is otherwise feasible.

It is the purpose of the Legislature to provide for rehabilitation and conservation of insurers by authorizing and requiring the additional facility of supervision and conservatorship by the State Board of Insurance, to authorize action to resolve whether an attempt be made to rehabilitate and conserve an insurer, and to avoid, if possible and feasible, the necessity of temporary or permanent receivership. It is the further purpose of this Act to provide for protection of the assets of an insurer pending determination of whether or not an insurer can be successfully rehabilitated. It is not the sense of the Legislature that rehabilitation will be accomplished in every case, but it is the purpose of this Article to provide a facility and direction for attempting the rehabilitation without immediate resort to the harsher remedy of receivership. In the event that receivership ultimately becomes necessary, it is nevertheless the belief and finding of the Legislature that the preliminary supervision and conservatorship is preventive of a dissipation of assets and will thus benefit policyholders, creditors and owners; and the State Board of Insurance is directed, in its discretion, to the use of this authorization. The Legislature further finds that an insurer delinquency, or the state's incapacity to properly proceed in a threatened delinquency, directly or indirectly affects

other insurers by creating a lack of public confidence in insurance and in insurance companies. As respects the state, insurer delinquencies are destructive of public confidence in the capacity of the state to regulate insurers. These and other harmful results of insurer delinquency are properly minimized by a further enactment designed to protect and in aid of insureds, creditors and owners. The Legislature intends and expects that the inappropriate as well as the appropriate concerns in respect of insurance and insurers will be reduced by the existence and operation of this law. The Legislature declares that it is a proper concern of this state and proper policy to attempt to correct or remedy insurer misconduct, ineptness or misfortune. It is the purpose of the Legislature to express, or to imply from context when not expressed, an authorization, provision and enabling of the promulgation of rules and regulations by the State Board of Insurance as directed in these legislative findings and in the augmentation of this law; and to provide also for any other requisite administrative action. In consequence of the foregoing, the substance and procedure of this Article is here declared to be the public policy of this state and necessary to the public welfare. Such policy and welfare requires the availability of this law and the application of this law whenever circumstances warrant; and it is therefore a condition of doing an insurance business in this state; and it is made applicable and is a consequence of any other transactions in respect of an insurer or insurance. And in conjunction with existing law, the rationale is effected in the provision herein for a generally ordered sequence, and review at each such step, of supervision, concurrent conservation and rehabilitation (including reinsurance), and, as may at any time or ultimately be indicated or determined, cessation of the conservation by accomplishment of rehabilitation or by receivership and liquidation.

#### Definition, Application and Scope

Sec. 2. As used in this Article, the following words, terms and phrases (in single quotes in this Section of the Article but not in quotes in other Sections) include the meanings, significance or application described in this Section, except as another meaning is clearly requisite from the purposes or is otherwise clearly indicated by the context.

(a) "Insurance Company" (used interchangeably with "insurer") is any person, organization, association or company, (authorized or unauthorized, admitted or non-admitted) acting as an insurer, or as principal or agent of an insurer, including stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies.

(b) In respect of an insurance company or insurer, "insolvent" or "insolvency" and the phrases in further identity of insurer delinquency and threatened insurer delinquency, mean and include, and the conditions to which this Article is applicable include, but are not limited to, any one or more of the following circumstances or conditions.

(1) if an insurance company's required surplus, capital, or capital stock is impaired to an extent prohibited by law, or

(2) if an insurance company continues to write new business when it is not possessed of the surplus, capital or capital stock which is required of it by law to permit it to do so, or

(3) if the business of any such insurance company is being conducted fraudulently, or

(4) if any such insurance company attempts to dissolve or liquidate without first having made provisions, satisfactory to the Commissioner of Insurance, for liabilities arising from policies of insurance issued by such company.

(c) "Exceeded its Powers" includes and means but is not limited to the following circumstances:

(1) if an insurance company has refused to permit examination of its books, papers, accounts, records, or affairs by the Commissioner of Insurance, his deputy, or duly commissioned examiners; or if any insurance company, organized in the State of Texas, has removed from the state such books, papers, accounts or records necessary for an examination of such insurance company, or

(2) if an insurance company has failed to promptly answer inquiries authorized by Article 1.25 of this Code, or

(3) if an insurance company has neglected or refused to observe an order of the Commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus, or

(4) if an insurance company without first having obtained written approval of the Commissioner has by contract or otherwise: (i) totally reinsured its entire outstanding business, or (ii) merged or consolidated substantially its entire property or business with another insurer; or

(5) if any insurance company is continuing to write business after its license has been revoked or suspended.

(d) "Consent," as used in this Act, includes and means agreement to either supervision or conservatorship by the insurance company.

Notice to Comply With Written Requirements of Commissioner;  
Noncompliance; Taking Charge as Conservator

Sec. 3. If upon examination or at any other time it appears to or is the opinion of the Commissioner of Insurance that any insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such company appears to have exceeded its powers (as defined herein) or has failed to comply with the law, or if such insurance company gives its consent (as defined herein), then the Commissioner of Insurance shall upon his determination (a) notify the insurance company of his determination, and (b) furnish to the insurance company a written list of the Commissioner's requirements to abate his determination, and (c) if the Commissioner makes a further determination to supervise he shall notify the insurance company that it is under the supervision of the Commissioner of Insurance and that the Commissioner is applying and effecting the provisions of this Article. Such insurance company shall comply with the lawful requirements of the Commissioner of Insurance and if placed under supervision shall under supervision have sixty (60) days from the date of notice within which to comply with the requirements of the Commissioner, subject however to the provisions of this Article. In the event of such insurance company's failure to comply within such time, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall immediately, after due and proper notice and hearing, take charge as conservator of the insurance company and all of the property and effects thereof.

Prohibited Acts During Sixty (60) Day Period of Supervision

Sec. 4. (a) During the period of supervision, the Commissioner may appoint a supervisor to supervise such insurance company and may provide that the insurance company may not do any of the following things, during the period of supervision, without the prior approval of the Commissioner or his supervisor:

- (1) Dispose of, convey or encumber any of its assets or its business in force;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation or liability;
- (7) Merge or consolidate with another company; or
- (8) Enter into any new reinsurance contract or treaty.

(b) The Liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the supervisor.

Conservatorship or Liquidation

Sec. 5. If, after notice, and after hearing, at the conclusion of said sixty (60) day period, it is determined that such insurance company has failed to comply with the lawful requirements of the Commissioner, or upon consent by an insurance company, the Commissioner may appoint a conservator, who shall immediately take charge of such insurance company and all of the property, books, records, and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Commissioner may direct. During the pendency of conservatorship, the conservator shall make such reports to the Commissioner from time to time as may be required by the Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such insurance company, including claims or causes of action belonging to or which may be asserted by such insurance company, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If at the time of appointment of a conservator or at any time during the pendency of such conservatorship it appears that the interest of the policyholders or certificate holders of such insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction of the Commissioner: (1) reinsure all or any part of such insurance company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this state, and (2) to the extent that such insurance company in conservatorship is possessed of reserves attributable to such policies or certificates of insurance, the conservator may transfer to the reinsuring company such reserves or any portion thereof as may be required to consummate the reinsurance of such policies, and any such reserves so transferred shall not be deemed a preference of creditors. The liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the conservator. If the Commissioner of Insurance, however, is satisfied that such insurance company is not in condition to continue business in the interest of its policy or certificate holders, under the conservator as above provided, the Commissioner of Insurance shall give notice to the Attorney General who shall thereupon apply to any Court in Travis County, Texas, having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such insurance company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency, and to satisfy the requirement that its condition is such as to render the continuance of its business not hazardous to the public or to the holders of its policies or certificates of insurance. It shall be

in the discretion of the Commissioner of Insurance to determine whether or not he will operate the insurance company through a conservator, as provided above, or report it to the Attorney General, as herein provided. When all the policies of an insurance company are reinsured or terminated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the insurance company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, consolidation or reinsurance of all the policies of one insurance company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the insurance company from which the policies were merged, consolidated or reinsured, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the supervisor's and conservator's service shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the insurance company to be allowed and paid as the Commissioner of Insurance may determine.

#### Out of State Companies

Sec. 6. This Article shall apply to insurance companies doing an insurance business but not domiciled in the State of Texas, whether authorized to do business in this state or not. In the event that the Commissioner of Insurance makes any of the findings provided for in Section 3 of this Article concerning any such insurance company or finds that any such insurance company is not possessed of the minimum surplus or capital or capital stock required by the Insurance Code of the State of Texas for similar type domestic companies, or if a conservator, rehabilitator, receiver, or liquidator has been appointed in the state of domicile, or if the insurance company gives its consent as defined herein, the Commissioner of Insurance shall have the same power and jurisdiction to appoint a supervisor or conservator as to the assets of such out of state insurer located in this state as provided herein for domestic insurance companies. In the event that any such out of state insurance company shall fail to comply with the provisions of Section 4 of this Article with respect to any of its assets or policies located within this state during any sixty (60) day period of supervision, such act or violation shall constitute sufficient grounds for the immediate revocation of its certificate of authority to do business in this state and for the immediate appointment of a conservator to take charge of its assets located within this state. Any supervisor or conservator appointed with respect to assets located in this state belonging to an out of state insurance company shall have all of the powers and authority provided for in Section 5 of this Article with respect to such assets located in this state and, in addition, may reinsure all or any part of such

insurance company's policyholders or certificate holders located within this state with some solvent insurance company authorized to transact business in this state and may transfer to the reinsuring company, as reserve funds, assets or any portion thereof in his possession as may be required to consummate the reinsurance of such policies and any of such assets transferred as reserve funds shall not be deemed a preference of creditors.

#### Review and Stay of Action

Sec. 7. During the period of supervision and during the period of conservatorship, the insurance company may request the Commissioner of Insurance or in his absence, the duly appointed deputy for such purpose, to review an action taken or proposed to be taken by the supervisor or conservator, specifying wherein the action complained of is believed not to be in the best interests of the insurance company, and such request shall stay the action specified pending review of such action by the Commissioner or his duly appointed deputy. Any order entered by the Commissioner appointing a supervisor and providing that the insurance company shall not do certain acts as provided in Section 4 of this Article, any order entered by the Commissioner appointing a conservator, and any order by the Commissioner following the review of an action of the supervisor or conservator as hereinabove provided shall be immediately reviewed by the State Board of Insurance upon the filing of an appeal by the insurance company. The Board shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter, and the requirement of ten (10) days notice set out in Article 1.04(d) of this Code may be waived by the parties of record. The Board may stay the effectiveness of any order of the Commissioner, pending its review of such order. Such appeal shall have precedence over all other business of a different nature pending before the Board, and in the public hearing any and all evidence and matters pertaining to the appeal may be submitted to the Board, whether included in the appeal or not, and the Board shall make such other rules and regulations with regard to such applications and their consideration as it deems advisable. If such insurance company be dissatisfied with any decision, regulation, order, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied insurance company after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, except as interpretation of the Constitution may require, but such action shall be tried and determined upon a trial de novo to the same extent as

now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

Venue

Sec. 8. Except for causes of action based upon terms of an insurance policy or policy or policies issued by an insurance company placed in conservatorship, any suit filed against an insurance company or its conservator, after the entrance of an order by the Commissioner of Insurance placing such insurance company in conservatorship and while such order is in effect, shall be brought in a court of competent jurisdiction in Travis County, Texas, and not elsewhere. The conservator appointed hereunder for such company may file suit in any court of competent jurisdiction in Travis County, Texas, against any person for the purpose of preserving, protecting, or recovering any assets or property of such insurance company including claims or causes of action belonging to or which may be asserted by such insurance company.

Duration of Conservatorship

Sec. 9. As respects a conservatorship, the conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this Act. If rehabilitated, the rehabilitated insurance company shall be returned to management or new management under such reasonable conditions as will best tend to prevent the defeat of the purposes for which it was placed in conservatorship.

Administrative Election of Proceedings

Sec. 10. (a) If the Commissioner determines to act under authority of this Article, or is directed by the State Board of Insurance or a court of competent jurisdiction to act under this Article, the sequence of his acts and proceedings shall be as set forth herein. However, it is a purpose and substance of this Article to authorize administrative discretion—to allow the State Board of Insurance and the Commissioner administrative discretion in the event of insurance company delinquencies—and in furtherance of that purpose, the Commissioner is hereby authorized in respect of insurance company delinquencies or suspected delinquencies to proceed and administer either under this Article or under any other applicable law, or under this law in conjunction with other law, either as such law is now existing or as is hereafter enacted, and it is so provided.

Rules and Regulations

Sec. 11. The State Board of Insurance shall be empowered to adopt and promulgate such reasonable

rules and regulations as may be necessary for the augmentation and accomplishment of this Act, including its purposes.

Other Laws; Conflicts

Sec. 12. Other statutes authorized for use and application in conjunction with this Article are Section 14 of Article 17.25, and Articles 14.33 and 22.22 of the Insurance Code. Also authorized for use, in conjunction with this Article, in delinquency proceedings or threatened insolvencies of insurers, or any other statutes or laws possible of application with this Act or in the procedures of this Act, or in augmentation of this Act whether or not directed as applicable by such other statute; but in the event of conflict between this Article and any other Article, the provisions of this Article shall govern.

[Acts 1967, 60th Leg., p. 671, ch. 281, § 1, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 677, ch. 281, §§ 2, 3 provided:

"Sec. 2. This Act shall be cumulative of all other laws, general and special, relating to the subject matter hereof, and if in conflict with any other laws, general and special, the provisions hereof shall control and govern.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 21.28-B. Loss Claimant's Priorities Act

Title

Sec. 1. This Article shall be known as the Loss Claimant's Priorities Act.

Purpose

Sec. 2. The purpose of this Article as amendatory of the Insurance Code is to provide for the protection of the person with a loss claim against an insurer subject to an insolvency, liquidation, or bankruptcy proceeding, by creating a preference in payment of his loss claim prior to, during or in respect of that proceeding. It is the sense of the Legislature that the purpose of insurance as an instrument of progress and as an invention of society is for the many to share the financial burdens of the few who suffer loss. An individual bands together with other individuals by the purchase of insurance to assure that the financial burdens incurred by his loss which he alone cannot bear will be shared by others; the private insurer accomplishes this purpose by collecting premiums from its policyholders for distribution to those policyholders who suffer a loss. The purpose for which private insurers exist and the reason for which an individual purchases insurance are defeated by the failure to give preference in the payment of loss claims over other claims. It is the purpose of this Article to establish a preference in the payment of the whole of the amount of loss claims against an insurer that is the subject of an insolvency, liquidation, or bankruptcy proceeding.

Definition

Sec. 3. As used in this Article, loss claim is the claim of an insured, a third party beneficiary, or any

other person entitled thereto, under a contract of insurance or indemnification, for a loss arising within the terms of coverage provided in a contract of insurance or indemnification for an amount within the express limits of such insurance policy, but excluding a claim for unearned premium.

Scope and Application

Sec. 4. The provisions of this Article shall apply to all loss claims arising within the terms of coverage provided in any type of property-casualty insurance policy, including, but not limited to, insurance policies issued for the purpose of insuring those losses or risks mentioned or enumerated in the Insurance Code in Articles 6.03, 7.19-1, 8.01 (except Section 10 thereof), 16.01, and 17.01. The provisions of this Article shall apply to loss claims under all insurance policies issued by insurers organized or operating under Chapters 16, 17, 18, and 19 of the Insurance Code, any provisions of these Chapters to the contrary notwithstanding.

Consonant with the provision of Section 15, Article 1.10, Insurance Code, loss claims under insurance policies issued by insurers either organized or operating under Chapters 3, 9, 10, 11, 12, 13, 14, 20, and 22 of the Insurance Code, shall be excluded from the provisions of this Article. Provided, however, that the preceding exclusion shall not apply to loss claims under workmen's compensation insurance policies, and liability insurance policies issued by the insurers enumerated in the preceding exclusion, and loss claims under these insurance policies shall be entitled to the preference in payment of loss claims as provided in this Article.

Preference of Loss Claims

Sec. 5. The whole of the amount legally or lawfully determined to be due upon the loss claim, or any award or judgment thereon, shall be entitled to the same preference in payment in a liquidation proceeding, insolvency proceeding, or bankruptcy proceeding, or in the administration of liquidation, as is given by any law of this state or by the Federal Bankruptcy Act to claims for wages. The expenses necessary to the administration of a liquidation proceeding, insolvency proceeding, or bankruptcy proceeding, shall be met before payment of loss claims. To the extent that any other law is in conflict with or inconsistent with the provisions of this Article, the provisions of this Article shall take precedence and be effected.

Unconstitutional Application Prohibited

Sec. 6. This Article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

[Acts 1967, 60th Leg., p. 431, ch. 196, § 1, eff. May 15, 1967.]

Section 2 of Acts 1967, 60th Leg., p. 432, ch. 196 amended article 17.22; section 3 thereof provides: "Severability Clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can

be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 21.28-C. Property and Casualty Insurance Guaranty Act

Title

Sec. 1. This article shall be known and may be cited as the "Texas Property and Casualty Insurance Guaranty Act."

Purpose

Sec. 2. This Act is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies.

Construction

Sec. 4. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this Act

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is

permanently located in this State. "Covered claim" shall also include fifty percent (50%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed Five Hundred Dollars (\$500). Individual "covered claims" shall be limited to Fifty Thousand Dollars (\$50,000) and shall not include any amount in excess of Fifty Thousand Dollars (\$50,000). "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act.

(3) "Insurer" is stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also is county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include farm mutual insurance companies, title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, an insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

(5) "Payment of covered claims" is actual payment and also is utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims.

(6) "Net direct written premiums" is the gross amount of premiums received from policies of insurance issued in this State to which this Act applies, less return premiums and dividends paid or credited to policyholders. The term does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers.

(7) "Lines of business" is policies of insurance falling within one of the three following categories:

1. Workmen's Compensation insurance.
2. Automobile insurance.
3. All other insurance to which this Act applies.

#### Termination of Policies

Sec. 6. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within thirty (30) days after the determination of impairment, or before the policy expiration date if less than thirty (30) days after the determination of impairment, or before the insured replaces the policy or effects its cancellation, if he does so within thirty (30) days of the determination of impairment.

Upon the determination by the Commissioner that an insurer is an impaired insurer, the Commissioner shall notify the insureds of the impaired insurer of the determination and of their rights under this Act. Such notification shall be by mail at each insured's last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient.

#### Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the Commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The Commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business written by the impaired insurer. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the

Commissioner determines that such insurer is no longer an impaired insurer.

The Commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

#### Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

#### Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims" the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the Commissioner,

which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner. Upon completion of the final report the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

#### Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

#### Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further,

that in ancillary receiverships in this State, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator,

regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

#### Nonduplication of Recovery

Sec. 12. Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery under such insurance policy.

Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person having a covered claim who is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he has exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent; provided, however, that any nonresident holder of a covered claim for damage to property with a perma-

ment location in this State shall be entitled to payment of the covered claim without first having exhausted his right of recovery in his state of residence.

*Release from Conservatorship or Receivership*

Sec. 13. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the Commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The Commissioner shall give ten (10) days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer and the holders of the receipts shall be entitled to appear at and participate in such hearing.

*Creation of Advisory Association*

Sec. 14. There is created by this Act an advisory association to be known as the "Texas Property and Casualty Advisory Association," herein called the "advisory association" to be composed of eight insurers. Within thirty (30) days after the effective date of this Act, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, two shall be appointed to serve for a one year term of office, two shall be appointed to serve for a two year term of office, two shall be appointed to serve for a three year term of office, and two shall be appointed to serve a four year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval of the Commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this Act giving due consideration to the various categories of premium income, geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the Commissioner or upon written request of a ma-

majority of the members. Meetings shall not be open to the public and only members of the advisory association, members of the State Board of Insurance, the Commissioner and persons authorized by the Commissioner shall attend such meetings.

The advisory association shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or of an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, the Liquidator or Conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, Liquidator or Conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the Commissioner, Liquidator or Conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the Commissioner, Liquidator or Conservator.

Members shall serve without pay but their expenses in attending meetings shall be paid subject to

the authorization by the Legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the Receiver or Conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within ninety (90) days after the effective date of this Act promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

**Recognition of Assessments in Rates and Premium Tax Offset**

Sec. 15. Insurers shall be entitled to recoup assessments up to one percent (1%) of their net direct written premiums from rates promulgated, established or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing or approving rates shall take into account assessments and refunds of assessments made in accordance with this Act and shall include in the formula forming the basis for promulgating, establishing or approving rates sums sufficient to provide for such recoupment.

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years.

**Immunity**

Sec. 16. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this Act or its agents or employees, the advisory association or the Commissioner or his representatives for any action taken by them in the performance of their powers and duties under this Act.

**Rules and Regulations**

Sec. 17. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

**Appeals**

Sec. 18. Any action or ruling of the Commissioner under this Act may be appealed as provided in Article 1.04 of the Insurance Code. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

**Control Over Conflicts**

Sec. 19. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

**Unconstitutional Application Prohibited**

Sec. 20. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

**Severance Clause**

Sec. 21. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 1362, ch. 360, § 1, eff. May 25, 1971.]

**Art. 21.28-D. Life, Accident, Health, and Hospital Service Insurance Guaranty Association**

**Short Title**

Sec. 1. This Act shall be known and may be cited as the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act.

**Purpose**

Sec. 2. The purpose of this Act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies; accident insurance policies; health insurance policies, annuity contracts, and supplemental contracts, and the holders of group hospital service contracts, subject to certain limitations, against failure in the performance of contractual obligation due to the impairment of the insurer issuing such policies or

contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this Act, and (3) the association is authorized to proceed in the prescribed manner, in the detection and prevention of insurer impairments.

#### Scope

Sec. 3. (1) This Act shall apply to direct life insurance policies, accident insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life, accident or health insurance policies, group hospital service contracts and annuity contracts issued by any domestic member insurer and all such policies and contracts issued by a foreign or alien insurer on residents of this state at the time such insurer becomes an impaired insurer as defined in this Act.

(2) This Act shall not apply to:

(a) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(b) Any kind of reinsurance contract or agreement between insurers, the terms of which do not create a direct liability of the assuming insurer, or the terms of which do not require the creation of a direct liability to the policyholder through issuance of an assumption certificate, or other written instrument;

(c) Any kind of insurance or annuities, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or by a separate entity;

(d) Any such policies or contracts issued by a foreign or alien insurer on nonresidents of this state at the time such insurer becomes an impaired insurer as defined in this Act;

(e) Any such policy or contracts of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statutes or regulations for residents of this state protection substantially similar to that provided by this Act for residents of other states;

(f) Any such policies or contracts issued by mutual assessment companies, local mutual aid associations, statewide mutual assessment companies, local mutual burial associations, stipulated premium insurance companies, fraternal benefit societies and assessment-as-needed companies, nor to such policies or contracts issued by insurers subject to the provisions of Chapter 360, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.28-C, Vernon's Texas Insurance Code).

#### Construction

Sec. 4. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

#### Definitions

Sec. 5. As used in this Act:

(1) "Account" means any of the three accounts created under Section 6 of this Act.

(2) "Association" means the Life, Accident, Health and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

(3) "Commissioner" means the Commissioner of Insurance of this state.

(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include an amount for death benefit coverage in excess of \$300,000 in the aggregate under one or more covered policies on any one life.

(5) "Covered policy" means any policy or contract within the scope of this Act under Section 3.

(6) "Member insurer" means any insurance company authorized to transact in this state any kind of insurance to which this Act applies under Section 3.

(7) "Insolvent insurer" means a member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes, after the effective date of this Act, impaired to the extent prohibited by law.

(8) "Impaired insurer" means:

(a) A member insurer which, after the effective date of this Act, is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code); and that has been designated an "Impaired Insurer" by the commissioner, or

(b) A member insurer determined in good faith by the commissioner after the effective date of this Act to be unable or potentially unable to fulfill its contractual obligations.

(9) "Premiums" means direct gross insurance premiums and annuity considerations subject to Texas premium tax written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders

on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in Section 9, "premiums" are those for the calendar year preceding the determination of insolvency or impairment.

(10) "State Board of Insurance" means the State Board of Insurance created under Article 1.02, Insurance Code, as amended.

#### Creation of the Association

Sec. 6. (1) There is created hereby a nonprofit legal entity to be known as the Life, Accident, Health and Hospital Service Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 below, and shall exercise its powers through a board of directors established under Section 7 below. For purposes of administration and assessment, the association shall establish three accounts:

(a) The accident, health and hospital services account;

(b) The life insurance account; and

(c) The annuity account.

(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

#### Board of Directors

Sec. 7. (1) The State Board of Insurance shall appoint a board of directors of the association consisting of nine members, three of whom shall be chosen from employees or officers chosen from the ten member companies having the largest total direct premium income based on the latest financial statement on file at date of appointment, and the remaining members shall be chosen from the other companies to give fair representation to all such member insurers based on due consideration of their varying categories of premium income and geographical location. Of the original board of directors, three members shall be designated to serve for a four-year term of office; three members shall be designated to serve for a two-year term of office; and three shall be designated to serve for a six-year term of office. At the expiration of the term of office of each director, the State Board of Insurance shall appoint a successor to serve for a six-year term of office. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. Should any director cease to be an officer or employee of a member insurer during his term of office, such office shall become vacant until

his successor shall have been appointed. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

#### Powers and Duties of the Association

Sec. 8. In addition to the powers and duties enumerated in other sections of this Act,

(1) If a member insurer becomes an insolvent insurer, as that term is herein defined, and has been designated an "Impaired Insurer" by the commissioner, the association shall, upon entry by a court of competent jurisdiction after the effective date of this Act of an order appointing a receiver, either temporary or permanent, to take charge of the assets of such insolvent insurer, subject to any reasonable conditions imposed by the association and approved by the commissioner, guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of such insolvent insurer, and shall make or cause to be made prompt payment of the contractual obligations of such insolvent insurer.

(2) If a member insurer becomes an impaired insurer, as that term is herein defined, the association may, subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed or reinsured, the impaired insurer's covered policies; or

(b) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate Subparagraph (a) above, and assure payment of the impaired insurer's contractual obligations pending action under Subparagraph (a) above, or

(c) loan money to the impaired insurer.

(3) In carrying out its duties under Paragraphs (1) and (2), above, the association may impose moratoriums or policy liens against the nonforfeiture values of any contractual obligation under a covered policy; and

(4) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(5) The association shall have standing to appear before any court in this state with jurisdiction over an insolvent insurer or an impaired insurer concerning which the association is or may become obligated under this Act. Such

standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the insolvent insurer or the impaired insurer and the termination of the covered policies and contractual obligations.

(6) (a) Any person receiving benefits under this Act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this Act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this Act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer or the impaired insurer as that possessed by the person entitled to receive benefits under this Act.

(7) The contractual obligations of the insolvent insurer or impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the insolvent insurer or impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by Paragraph (3).

(8) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this Act;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under Section 9;

(c) borrow money to effect the purposes of this Act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(e) negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

#### Assessments

Sec. 9. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the commissioner shall assess the member insurers, separately for each account, at such times and for such amounts as the board of directors finds necessary. All assessments ordered by the commissioner shall be payable to the association and the board of directors shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be two classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular insolvent or impaired insurer;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board of directors. The amount of any Class B assessment shall be divided among the accounts in the proportion that the premiums received by such insurer on all covered policies;

(b) Class A and Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bears to such premiums received on all business by all assessed member insurers;

(c) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Paragraph (2), above, and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The commissioner may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed one percent of such insurer's premiums on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in Paragraph (4), above, the amount by which such assessment is abated or deferred, may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this paragraph. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

(6) The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer, the amount by which the assets exceed the amount the board of directors finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) The association shall issue to each insurer paying a Class B assessment under this Act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.

(8) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due. Any insurer whose certificate of authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

(9) The provisions of this section shall be valid and enforceable so long as the provisions of Section 19 remain in full force and effect.

#### Plan of Operation

Sec. 10. (1) (a) The association shall submit to the commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner;

(b) If the association fails to submit a suitable plan of operation within 180 days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under Section 7;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 9;

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under Paragraph (8)(c) of Section 8 and Section 9, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this paragraph shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not less favorably and effective than that provided by this Act.

#### Duties and Powers of the Commissioner

Sec. 11. In addition to the duties and powers enumerated elsewhere in this Act,

(1) The commissioner shall:

(a) notify the board of directors of the existence of an insolvent or an impaired insurer not later than three days after a determination of impairment is made or after receipt of notice of impairment, whichever is earlier. The commissioner shall within three days notify the association of a member insurer placed under supervision pursuant to Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code);

(b) upon request of the board of directors provide the association with a statement of the premiums for each member insurer;

(c) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the insolvent

or impaired insurer to make good the impairment within a reasonable time. Notice to such insurer shall constitute notice to its shareholders, if any. The failure of such insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this Act.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture upon any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any forfeiture paid under this section shall be paid by the member insurer to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to appeal to the State Board of Insurance and to judicial review as provided in Sections (d) and (f), Article 1.04, Insurance Code, as amended.

#### Prevention of Impairments

Sec. 12. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. The board of directors shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, includ-

ing examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or an insurer the commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator or conservator appointed by the commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation or individual recommendation by the board of directors or members to the commissioner, liquidator or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this Act or exercised any of its powers under this Act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the commissioner.

(6) Any insurer that has an officer, director or employee serving as a member of the board

of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

#### Miscellaneous Provisions

Sec. 13. (1) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under Section 8. Records of all such negotiations or meetings shall be made public only upon the termination of a receivership, liquidation, rehabilitation, conservatorship proceeding involving the insolvent insurer or impaired insurer, or upon the order of a court of competent jurisdiction. Nothing in this paragraph shall limit the duty of the association to render a report of its activities under Section 14.

(2) For the purpose of carrying out its obligations under this Act, the association shall be deemed to be a creditor of the insolvent insurer or impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Paragraph (6) of Section 8. All assets of the insolvent insurer or impaired insurer attributable to covered policies and all assets to which covered policyholders are given a right of priority shall be used to continue all covered policies and to pay all contractual obligations of such insurer as required by this Act.

(3) (a) Prior to the termination of any receivership, liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer or impaired insurer, and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such insurer. In such a determination, consideration shall be given the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an insolvent or impaired insurer shall be made until and unless the total amount of assessments levied by the commissioner with respect to such insurer has been fully recovered by the association.

(4) The use in any manner of the protection afforded by this Act by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Texas Insurance Code, as amended, and shall be subject to the provisions thereof.

(5) (a) If an order for receivership, liquidation, rehabilitation, or conservatorship of a member insurer has been entered, the receiver appointed under such order shall have the right to recover on behalf of such insurer from any affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it the amount of distributions, other than stock dividends paid by such insurer on its capital stock, at any time during the five years preceding the petition for receivership, liquidation, rehabilitation, or conservatorship, subject to the limitations of Subparagraphs (b) to (d), below:

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this paragraph shall be the amount needed in excess of all other available assets of the insolvent insurer or impaired insurer to pay the contractual obligations of such insurer.

(e) If any person liable under Subparagraph (c) is insolvent, all its affiliates as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code).

#### Examination of the Association; Annual Report

Sec. 14. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

#### Tax Exemptions

Sec. 15. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

## Immunity

Sec. 16. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents, or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken or not taken by them in the performance of their powers and duties under this Act.

## Continuing to Write Insurance Policies

Sec. 17. Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued after the effective date of and while an impaired insurer is subject to an order by the commissioner of insurance placing an impaired insurer in conservatorship unless the commissioner, in his order appointing the conservator, directs the conservator to continue the issuance of insurance policies, under such terms and conditions as the commissioner may prescribe. The commissioner shall furnish a copy of such order to the board of directors of the association. In the event that the commissioner, in his original order appointing the conservator, directs the conservator to continue the issuance of insurance policies in the impaired insurer, companies subject to the provisions of this Act shall not be liable for assessments for claims arising from insurance policies issued more than 90 days after the date of the commissioner's order appointing the conservator unless the commissioner, prior to the expiration of such 90 day period, determines, after public hearing, that it is in the best interests of the policyholders of the impaired insurer or in the public interest for the impaired insurer to continue the issuance of insurance policies. At least 10 days notice of such hearing shall be given to the board of directors of the association. The board of directors shall have the right to appear at and participate in the hearing. The conservator or his representative shall appear at such hearing and present evidence why it would be in the best interest of the policyholders of the impaired insurer to continue the issuance of policies.

Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued after the effective date of and while an impaired insurer is subject to an order by a court of competent jurisdiction placing an impaired insurer in temporary or permanent receivership.

## Release from Conservatorship or Receivership

Sec. 18. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the amount of Class B assessments paid to the association to carry out

the duties of the association under Section 8 in relation to such insurer the amount paid; provided, however, the commissioner may, upon application of the board of directors of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

## Tax Write-Offs of Certificate of Contribution

Sec. 19. (1) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner pursuant to Section 9, Paragraph (7), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

- 100 percent for the calendar year of issuance;
- 80 percent for the first calendar year after the year of issuance;
- 60 percent for the second calendar year after the year of issuance;
- 40 percent for the third calendar year after the year of issuance;
- 20 percent for the fourth calendar year after the year of issuance.

(2) The insurer may offset the amount written off by it in a calendar year under Paragraph (1), above, against its premium tax liability to this state accrued with respect to business transacted in such year. Provided, however, an insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within such year.

(3) Any sums acquired by refund, pursuant to Paragraph (6) of Section 9, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in Paragraph (2), above, and are not then needed for purposes of this Act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

## Rules and Regulations

Sec. 20. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

[Acts 1973, 63rd Leg., p. 1052, ch. 408, § 1, eff. Aug. 27, 1973.]

Sections 2 to 4 of the 1973 Act provided:

"Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of conflict only.

"Sec. 3. Except as provided in Section 9(9) of Article 21.28-D, as set out in Section 1, of this Act, it is provided that if any section, subsection,

paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions despite such invalidity.

"Sec. 4. Unconstitutional application prohibited. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it can not validly apply."

**Art. 21.28-E. Life, Health and Accident Guaranty Act**

Title

Sec. 1. This article shall be known and may be cited as the "Texas Life, Health and Accident Guaranty Act."

Purpose

Sec. 2. This Act is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by mutual assessment companies, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies and stipulated premium insurance companies licensed to do business in this State, that elect to voluntarily participate under the provisions of this Act.

Construction

Sec. 4. This Act shall be liberally construed to effect the purpose of Section 2, which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this Act

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is any policy benefit (including, but not limited to, death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations) to the owner, beneficiary, assignee, certificate holder, or third party beneficiary, arising from an insurance policy to which this Act applies, issued or assumed by an "insurer" (as defined herein), if such insurer becomes an "impaired insurer" after the effective date of this Act. "Covered claim" shall not include liabilities that are not policy benefits, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, penalty and bond premiums.

(3) "Insurer" is such mutual assessment companies, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies and stipulated premium insurance companies, licensed to do business in this State, that voluntarily agree to participate under the provisions of this Act as hereinafter provided.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction and which has been determined an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, an insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent or its condition such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance and which has been determined an "impaired insurer" by the Commissioner.

(5) "Payment of covered claims" is actual payment and also is utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims; and is also a utilization of future income, from assessments, pledged to retire liens against policies assumed or reinsured under such contracts of reinsurance or assumption of liabilities or substitution to provide for liabilities.

(6) "Net direct written premiums" is the gross amount of premiums collected on individual life and accident and health policies and certificates of group life and group accident and health insurance issued after the effective date of this Act, less premiums paid for reinsurance ceded, premium refunds, and dividends on said policies and certificates.

(7) "Lines of business" is policies of insurance falling within one of the two following categories:

1. Life Insurance.
2. Health and Accident Insurance.

Termination of Policies

Sec. 6. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within one hundred eighty (180) days after the determination of impairment, or before the policy expiration date if less than one hundred eighty (180) days after the determination of impairment, or before the insured replaces the policy or effects its cancellation, if he does so within one hundred eighty (180) days of the determination of impairment.

If the receiver or conservator of an impaired insurer has not provided for payment of covered

claims of an impaired insurer within one hundred fifty (150) days after such insurer has been determined an "impaired insurer" by the Commissioner, the Commissioner shall notify the insureds of the impaired insurer of their rights under this Act. Such notification shall be by mail at each insured's last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient.

#### Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the Commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The Commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business written by the impaired insurer. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

The Commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within (30) days after the Commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that

purpose. Venue for such suits shall lie in Travis County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

#### Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

#### Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in "payment of covered claims" the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the Commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner. Upon completion of the final report the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

## Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of covered claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshaled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

## Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshaled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshaled by the receivers in other states for application to payment of covered claims within this State. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered

claim and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshaled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

## Nonduplication of Recovery

Sec. 12. Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person having a covered claim who

is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he has exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent.

Release from Conservatorship or Receivership

Sec. 13. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the Commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The Commissioner shall give ten (10) days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 14. There is created by this Act an advisory association to be known as the "Texas Life, Health and Accident Guaranty Association," herein called the "advisory association" to be composed of four insurers. Within thirty (30) days after this Act is placed in effect by the election of an adequate number of insurers electing to participate hereunder, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, two shall be appointed to serve for a one year term of office, and two shall be appointed to serve for a two year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval of the Commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this Act giving due consideration to the various categories of premium income, geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the Commissioner or upon written request of a ma-

jority of the members. Meetings shall not be open to the public and only members of the advisory association, members of the State Board of Insurance, the Commissioner and persons authorized by the Commissioner shall attend such meetings.

The advisory association shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, director and employees of an insolvent or impaired insurer (or of an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, the liquidator or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator or conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshaling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the Commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the Commissioner, liquidator or conservator.

Members shall serve without pay but their expenses in attending meetings shall be paid subject to

the authorization of the Legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within ninety (90) days after the effective date of this Act promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

#### Recognition of Assessments in Premium Tax Offset

Sec. 15. An insurer shall be entitled to recoup assessments made in any calendar year in excess of one percent (1%) of its net direct written premiums for the previous calendar year as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessments, and at the option of the insurer may be taken over an additional number of years.

#### Immunity

Sec. 16. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this Act or its agents or employees, the advisory association or the Commissioner or his representatives for any action taken by them in the performance of their powers and duties under this Act.

#### Rules and Regulations

Sec. 17. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

#### Appeals

Sec. 18. Any action or ruling of the Commissioner under this Act may be appealed as provided in Article 1.04 of the Insurance Code. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

#### Election to Participate; Withdrawal

Sec. 19. The provisions of this Act are voluntary only. No Statewide mutual assessment company, local mutual aid association, local mutual burial association, or stipulated premium insurance company shall be covered by the provisions of this Act unless such insurers shall elect to participate under the provisions of this Act. In the event any such Statewide mutual assessment company, local mutual aid association, local mutual burial association, or stipulated premium insurance company shall elect to participate hereunder, it may do so by filing such election in writing upon forms prescribed by the State Board of Insurance and filed with the Commissioner of Insurance; and such election forms shall be signed by the president, secretary, and each director of such electing insurer. Unless and until such written election is so filed, such insurer shall not be obligated under nor receive any benefit from the provisions of this Act. Any such insurer so electing to participate may withdraw from participation under the provisions of this Act provided that a majority of insurers that have elected to participate hereunder consent to such withdrawal. Such election to withdraw shall be upon forms promulgated by the State Board of Insurance and shall be filed with the Commissioner, and such withdrawal shall only be effective two (2) years following the date of such election. Six months prior to the effective date of such withdrawal the withdrawing insurer shall notify all of the holders of its policies or certificates of its withdrawal. Upon filing of election to withdraw an insurer shall cease advertising that its policies are protected under the provisions of this Act.

#### Effectiveness of Act

Sec. 20. This Act shall not be effective until such date that insurers having combined premium income in the immediately prior calendar year of at least Five Million Dollars (\$5,000,000.00) shall elect in writing to participate under the provisions of this Act. Immediately following the receipt of such elections the State Board of Insurance shall enter an order designating those insurers participating under this Act and shall thereafter supplement such order by listing those insurers who subsequently elect to participate and those who subsequently elect to withdraw.

#### Advertising Procedures

Sec. 21. Within ninety (90) days following the entry of the original Board order as specified in Section 20 of this Act, the State Board of Insurance, following notice and hearing, shall enter an order providing the method, manner, and procedures whereby such participating insurers may advertise that such insurers' policies are protected under the provisions of this Act.

#### Control Over Conflicts

Sec. 22. The provisions of this Act and the powers and functions authorized by this Act are to be

exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

**Unconstitutional Application Prohibited**

Sec. 23. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

**Severance Clause**

Sec. 24. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 3378, ch. 1034, § 1, eff. June 16, 1971.]

**SUBCHAPTER E. MISCELLANEOUS PROVISIONS**

**Art. 21.29. Must Publish Certificate**

Every insurance company doing business in this State, whether life, health, fire, marine or inland, shall publish annually, within thirty days after the issuance thereof, a certificate from the Board that such company has in all respects complied with the laws in relation to insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.30. Publication of Notices**

Whenever by any provision of this code, any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in this State which have a general circulation in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.31. Unlawful Dividends**

It shall not be lawful for any insurance company organized under the laws of this State to make any dividend, except from surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to any provision of this article shall subject the company making them to a forfeiture of its charter; and the Board shall forthwith revoke its certificate of authority. The Board shall give such company at least ten (10) days' notice in writing of its intention to revoke such certificate, stating specifically the reasons why it intends to revoke same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.32. Unlawful Dividend**

No life, health, fire, marine, or inland insurance company, organized under the laws of this state, shall make any dividend except from the surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks computed in the manner as provided elsewhere in this Code, and also there shall be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book-accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon shall have remained more than two years unsatisfied, and upon which interest shall not have been paid. In case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividend made contrary to the provisions of this Article shall subject the company making it to a forfeiture of its charter, and the Board shall forthwith revoke its certificate of authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 637, ch. 291, § 2.]

**Art. 21.33. Extension of Powers**

Corporations may be incorporated under the laws of this State to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements as prescribed by law for the incorporation of life insurance companies. No such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid-up capital stock of less than Two Hundred Thousand (\$200,000.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.34. Association of Companies**

In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Board to do business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.35. Policies and Applications**

Except as otherwise provided in this code, every contract or policy of insurance issued or contracted for in this State shall be accompanied by a written,

photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of Articles 21.16, 21.17, and 21.19 of this code shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two (2) years or less, provided premiums are duly paid; provided further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this State shall be valid or enforceable in any suit brought upon such contract two (2) years or more after the date of its issuance, when premiums due on such contract for the said term of two (2) years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.36. Revocation of Certificate of Authority**

Should any insurance company, except those designated in Article 3.61 of this code fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty (30) days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, cancelled and annulled, and said company shall be prohibited from transacting business of insurance in this State until said execution be satisfied.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.37. Officers, Directors or Trustees, Personal Non-Liability for Tax Payments**

No officer, trustee, or director of any insurer shall, in complying with the statutes, be subject to any personal liability by reason of any payment, or determination not to contest payment, deemed by the board of directors or trustees to be in the corporate interest of such insurer, of any license, excise, privilege, premium, occupation, or other fee or tax to any State, territory, or political subdivision thereof, unless prior to such payment the statute, ordinance, or other law imposing such fee or tax shall have been expressly held invalid by the State Court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States; provided, however, that nothing contained herein shall be construed as directly or indirectly limiting, minimizing, or interpreting the rights and powers of insurers and their officers, trustees, and directors heretofore existing.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.38. Repealed by Acts 1967, 60th Leg., p. 400, ch. 185, §§ 2, 4, eff. May 12, 1967**

Acts 1967, 60th Leg., p. 414, ch. 185, § 4, set out as a note under article 1.14-2, made licenses issued under article 21.38 effective until expiration

according to their terms and made taxes, which accrued under article 21.38, payable at rates and in accordance with the provisions of article 21.38 as they existed before the act of 1967 became effective.

**Art. 21.39. Loss or Claim Reserves**

Every insurer shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such claims. The Board of Insurance Commissioners shall adopt each current formula for establishing reserves applicable to each line of insurance recommended by the National Association of Insurance Commissioners and all companies writing the line of insurance to which each such adopted formula is applicable shall establish reserves in compliance therewith.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1955, 54th Leg., p. 413, ch. 117, § 52.]

**Art. 21.39-A. Asset Protection Act**

**Title**

Sec. 1. This article shall be known and may be cited as the Asset Protection Act.

**Purpose**

Sec. 2. This Act is for the purpose of requiring insurers to have and maintain unencumbered assets in an amount equal to reserve liabilities; to provide preferential claims against assets in favor of owners, beneficiaries, assignees, certificate holders, or third party beneficiaries of insurance policies; and to prevent the hypothecation or encumbrance of assets in excess of certain amounts without prior written order of the Commissioner of Insurance.

**Scope**

Sec. 3. This Act shall apply to all of the following types of domestic insurance companies and to all kinds of insurance written by such companies; and where used herein "insurer" shall mean: all domestic stock and mutual life, health and accident, fire, casualty, fire and casualty and title insurance companies, including mutual assessment companies, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies, stipulated premium insurance companies, fraternal benefit societies, group hospital service insurance companies, county mutual insurance companies, Lloyd's and reciprocal exchanges and mortgage guaranty insurance companies. This Act shall not apply to variable contracts for which separate accounts are required to be maintained and shall not apply to assessment as needed or farm mutual companies nor to insurance coverage written by assessment as needed or farm mutual companies. This Act shall not apply to an insurance company while subject to a conservatorship order issued by the Commissioner of Insurance nor to an insurance company while a court appointed receiver is in charge of its affairs.

## Definitions

## Sec. 4. As used in this Act:

1. "Reserve liabilities" are those liabilities which are required to be established by the insurer for all of its outstanding insurance policies in accordance with the Insurance Code, as amended or as hereafter amended;
2. "Reserve assets" are those assets of an insurer which are authorized investments for policy reserves in accordance with the Insurance Code, as amended or as hereafter amended;
3. "Assets" are all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer;
4. "Claimants" are any owners, beneficiaries, assignees, certificate holders, or third party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Act.

## Prohibition of Hypothecation

Sec. 5. Every insurer subject to the provisions of this Act shall at all times have and maintain free and unencumbered assets in an amount equal to its reserve liabilities, and no such insurer shall pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its capital and surplus; nor shall such insurer pledge, hypothecate or otherwise encumber more than ten per cent (10%) of its reserve assets as herein defined; provided, however, that the Commissioner of Insurance, upon application made to him, may issue a written order approving the hypothecation or encumbrance of any of the assets of such an insurer in any amount upon a finding that such hypothecation or encumbrance will not adversely affect the solvency of such insurer.

Any such insurer which shall pledge, hypothecate, or otherwise encumber any of its assets shall within (10) days thereafter report in writing to the Commissioner of Insurance the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of such transaction. In addition, each such insurer shall annually or more often if required by the Commissioner file with the Commissioner a statement sworn to by the chief executive officer of the insurer that (a) title to assets in an amount equal to the reserve liability of the insurer which are not pledged, hypothecated or otherwise encumbered is vested in the insurer, (b) the only assets of the insurer which are pledged, hypothecated or otherwise encumbered are as identified and reported in such sworn statement and no other assets of the insurer are pledged, hypothecated or otherwise encumbered, and (c) the terms and provisions of any such transaction of pledge, hypothecation, or encumbrance are as reported in such sworn statement.

Any person, corporation, association or legal entity which accepts a pledge, hypothecation or encum-

brance of any asset of an insurer as security for a debt or other obligation of such insurer not in accordance with the terms and limitations of this Act shall be deemed to have accepted such asset subject to a superior, preferential and automatically perfected lien in favor of claimants; provided, however, that such superior, preferential and automatically perfected lien in favor of claimants shall not apply to assets of an insurance company in conservatorship or receivership if the Commissioner of Insurance, in the conservatorship proceeding, or the court in which the receivership is pending, approves the pledge, hypothecation or encumbrance of such assets.

In the event of involuntary or voluntary liquidation of any insurer subject to this Act, claimants of such insurer shall have a prior and preferential claim against all assets of the insurer except those which have been pledged, hypothecated or encumbered in accordance with the terms and limitations of this Act. All claimants shall have equal status and their prior and preferential claim shall be superior to any claim or cause of action against the insurer by any person, corporation, association or legal entity.

## Control Over Conflicts

Sec. 6. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes be accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

## Unconstitutional Application Prohibited

Sec. 7. This Act does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

## Severance Clause

Sec. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 1372, ch. 361, § 1, eff. May 25, 1971.]

## Art. 21.40. Certificates from Other States

The Board, in calculating the reserve liability of any such company, may accept the certificate of the officer of any other state charged with the duty of supervising such company as to any such company organized under the laws of such state; provided, such certificate shows that such liability has been computed in accordance with the provisions of Article 21.39 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.41. Other Laws for Certain Companies**

No provision of this chapter shall apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provisions of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.42. Texas Laws Govern Policies**

Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

**Art. 21.43. Foreign Insurance Corporations**

(a) The provisions of this Code are conditions upon which foreign insurance corporations shall be permitted to do business within this state, and any such foreign corporation engaged in issuing contracts or policies within this state shall be held to have assented thereto as a condition precedent to its right to engage in such business within this state.

(b) No foreign insurance corporation of a type provided for in any Chapter of this Code shall be denied permission to do business within this state for the reason that the name of such corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, provided such foreign insurance corporation files an assumed name certificate setting forth a different name, with the State Board of Insurance and with county clerks as provided by Article 5924, Revised Civil Statutes of Texas, 1925. No such foreign insurance corporation shall transact or conduct any business in this state except under the assumed name.

(c) No foreign or alien insurance corporation shall be denied permission to do business within this state for the reason that all of its authorized capital stock has not been fully subscribed and paid for; provided

(1) That at least the minimum dollar amount of capital stock of such corporation required by the laws of this state (which may be less than all of its authorized capital stock) has been subscribed and paid for; and

(2) That it has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business such corporations seek to write; and

(3) That such corporation has fully complied with all laws of its domiciliary state relating to authorization and issuance of capital stock.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Acts 1959, 56th Leg., p. 172, ch. 98, § 1; Acts 1963, 58th Leg., p. 1310, ch. 500, § 2.]

**Art. 21.44. Foreign Insurance Companies other than Life**

No foreign insurance company other than one doing a life insurance business shall be permitted to do business within this State unless it shall have and maintain the minimum requirements of this Code as to capital or surplus or both, applicable to companies organized under this Code doing the same kind or kinds of insurance business.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 53.]

*Another Article 21.44 under a new Subchapter F, Judicial Review, was added by Acts 1955, 54th Leg., p. 933, ch. 364, § 1. See Article 21.44 following Article 21.50, post.*

**Art. 21.45. Minimum Insurance to Be Maintained by Insurance Companies**

Sec. 1. Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or interinsurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas, shall maintain in force at all times not less than one hundred (100) Policy Holders or Certificate Holders nor less than Two Hundred Thousand Dollars (\$200,000) of insurance which has been written by said insurer or which has been acquired through reinsurance contracts; provided, however, that the provisions of this Act shall not apply to any such insurer which has had paid to it by Policy Holders gross premium income in excess of Fifty Thousand Dollars (\$50,000) during its last preceding accounting year, or until two (2) years after its original certificate of authority has been issued; and further provided that the provisions of this Act shall not take effect as to any insurer which has heretofore been issued an original certificate of authority until one (1) year after the effective date of this Act.

Sec. 2. The Board of Insurance Commissioners shall report to the Attorney General the failure of any insurer to comply with the provisions of this Article, whereupon the Attorney General shall bring suit in any district court of Travis County, Texas, for the purpose of canceling, forfeiting and revoking the charter, articles of association, or articles of agreement, and for the purpose of cancelling, forfeiting and revoking the certificate of authority of any such insurer.

Sec. 3. The local mutual aid associations and local mutual burial associations authorized to transact business under Chapters 12 and 14 of the Insurance Code, state-wide mutual assessment companies or associations authorized to transact business under

Chapters 13 and 14 of the Insurance Code, farm mutual insurance companies authorized to transact business under Chapter 16 of the Insurance Code, county mutual fire insurance companies authorized to transact business under Chapter 17 of the Insurance Code, fraternal benefit societies authorized to transact business under Chapter 10 of the Insurance Code, and those associations which are authorized to transact business under the provisions of Article 14.17 of the Insurance Code, shall be exempt from the provisions of this Article.

[Acts 1955, 54th Leg., p. 1192, ch. 468, § 1.]

*This article, added by Acts 1955, 54th Leg., p. 1192, ch. 468, as part of the Insurance Code of 1951, was designated as article 21.44. Section 2 of such 1955 Act provides that, "In the event another law passed at this session of the Legislature is also designed as Article 21.44 of the Insurance Code, the Article added by this Act shall be numbered Article 21.45 or the next succeeding number which is not assigned to some other statute enacted at this session." Acts 1955, 54th Leg., p. 413, ch. 117, § 53, and Acts 1955, 54th Leg., p. 993, ch. 364, § 1, both having been designated as art. 21.44, this article is designated art. 21.45, in accordance with the direction of section 2.*

**Art. 21.46. Retaliatory Provisions; Payment of Taxes, Fines, Penalties, etc.; Condition Precedent to Doing Business in State; Exemptions**

Whenever by the laws of any other state or territory of the United States any taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions are imposed upon any insurance company organized in this State and licensed and actually doing business in such other state or territory which, in the aggregate are in excess of the aggregate of taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon a similar insurance company of such other state or territory doing business in this State, the Board of Insurance Commissioners of this State shall impose upon any similar company of such state or territory in the same manner and for the same purpose, the same taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions; provided, however, the aggregate of taxes, licenses, fees, fines, penalties or other obligations imposed by this State pursuant to this Article 21.46 on an insurance company of another state or territory shall not exceed the aggregate of such charges imposed by such other state or territory on a similar insurance company of this State actually licensed and doing business therein; provided, further, that wherever under any law of this State the basic rate of taxation of any insurance company of another state or territory is reduced if any such insurance company has made investments in Texas

securities then in computing the aggregate Texas premium tax burdens of any such insurance company of any other state or territory each shall for purposes of comparison with the premium tax laws of their home states be considered to have assumed and paid an aggregate premium tax burden equal to the basic rate; provided, further, that for the purpose of this Section, an alien insurer shall be deemed a company of the State designated by it wherein it has

(a) established its principal office or agency in the United States, or

(b) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or

(c) in which it was admitted to do business in the United States.

The provisions of this Section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

The provisions of this Act shall not apply to a company of any other state doing business in this State if fifteen per cent (15%) or more of the voting stock of said company is owned by a corporation organized under the laws of this State, and domiciled in this State; however, the prior provisions of this Act shall apply without exception to any and all person or persons, company or companies, firm or firms, association or associations, group or groups, corporation or corporations, or any insurance organization or organizations of any kind, which did not qualify as a matter of fact, under the exception of this paragraph, on or before January 29, 1957.

[Acts 1957, 55th Leg., p. 1184, ch. 396, § 1.]

**Art. 21.47. False Statement in Written Instrument; Penalty**

Any person who knowingly or wilfully makes, files or uses any instrument in writing required to be made to or filed with the State Board of Insurance or the Insurance Commissioner, either by the Insurance Code or by rule or regulation of the State Board of Insurance, when the instrument in writing contains any false, fictitious, or fraudulent statement or entry with regard to any material fact, shall be fined not more than \$5,000 or imprisoned for not more than five years in the State penitentiary, or both.

[Acts 1971, 62nd Leg., p. 2449, ch. 789, § 2, eff. June 8, 1971.]

Repeal

A former article 21.47, enacted by Acts 1957, 55th Leg., p. 1425, ch. 493, § 1, and amended by Acts 1961, 57th Leg., p. 884, ch. 387, § 1, was repealed by Acts 1971, 62nd Leg., p. 2449, ch. 789, § 1.

**Art. 21.48. Insurance Company Insider Trading and Proxy Regulation Act**

Title of Act

Sec. 1. This Article shall be known as the "Insurance Company Insider Trading and Proxy Regulation Act."

**Statement of Beneficial Ownership of Equity Securities of Domestic Stock Companies; Form and Contents; Filing**

Sec. 2. Every person who is directly or indirectly the beneficial owner of more than ten per cent of any class of any equity security (other than an exempted security) of a domestic stock insurance company, or who is a director or an officer of such a company, shall file with the State Board of Insurance on or before the first day of July 1966 and thereafter within ten days after he becomes such beneficial owner, director, or officer, a statement, in such form as such Board may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of such Board a statement, in such form as it may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

**Recovery by Company of Profits Realized by Beneficial Owner From Purchase and Sale of Equity Securities; Suits**

Sec. 3. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This Section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the State Board of Insurance by rules and regulations may exempt as not comprehended within the purpose of this Section.

**Sale of Unowned Securities; Nondelivery of Owned Securities**

Sec. 4. It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company (other than an exempted security) if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty days thereafter, or

does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this Section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**Solicitation of Proxy, Consent or Authorization With Respect to Unlisted Equity Securities; Disclosure by Companies in Absence of Proxy Solicitation by Management**

Sec. 5. (1) It shall be unlawful for any person, in contravention of such rules and regulations as the State Board of Insurance may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any equity security (other than an exempted security) of a domestic stock insurance company not listed on a national securities exchange registered as such under the United States Securities Exchange Act of 1934, as amended.

(2) Unless proxies, consents, or authorizations in respect of a security of a domestic stock insurance company subject to subsection (1) of this Section 5 are solicited by or on behalf of the management of such company from the holders of record of stock of such company in accordance with the rules and regulations prescribed under this Section 5 prior to any annual or other meeting, such company shall, in accordance with such rules and regulations prescribed by the Board, file with the Commissioner and transmit to all holders of record of such security, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

**Investment Accounts; Primary or Secondary Markets**

Sec. 6. The provisions of Section 3 of this Article shall not apply to any purchase and sale, or sale and purchase, and the provisions of Section 4 of this Article shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The State Board of Insurance may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

**Foreign or Domestic Arbitrage Transactions**

Sec. 7. The provisions of Sections 2, 3 and 4 of this Article shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the State Board of

Insurance may adopt in order to carry out the purposes of this Act.

#### Definitions

Sec. 8. When used in this Article:

(1) "Board" means the State Board of Insurance;

(2) "Commissioner" means the Commissioner of Insurance;

(3) "Person" shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization;

(4) "Equity security" shall mean any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Board shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of the investors, to treat as an equity security;

(5) "Exempted security" or "exempted securities" shall mean such securities as the Board may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either conditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this Article which by their terms do not apply to an "exempted security" or to "exempted securities."

(6) "Officer" shall mean a president, vice-president, treasurer, actuary, secretary, controller, and any other person who performs for a domestic stock insurance company functions corresponding to those performed by the foregoing officers.

(7) Without limiting the generality thereof, the term "stock insurance company" shall include domestic title insurance companies, regulated by Chapter 9 of the Texas Insurance Code, and stipulated premium insurance companies, regulated by Chapter 22 of the Texas Insurance Code.

#### Registered Equity Securities

Sec. 9. The provisions of Sections 2, 3, 4 and 5 of this Article shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of Sections 2, 3, 4, and 5 of this Article except for the provisions of this subsection (b).

#### Rules and Regulations

Sec. 10. The State Board of Insurance shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in it by Sections 2 through 9 of this Article, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within its jurisdiction. No provision of Sections 2, 3, 4, and 5 of this Article imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the said Board, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

#### Violations; Criminal Penalties

Sec. 11. Any person who wilfully violates any provision of this Article or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this Article, or any person who wilfully and knowingly makes, or causes to be made, any statement in any document required to be filed under this Article or any rule or regulation thereunder which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than ten thousand dollars, or imprisoned not more than two years, or both; but no person shall be subject to imprisonment under this Section 11 for the violation of any rule or regulation if he proves that he has no knowledge of such rule or regulation.

#### Violations; Civil Penalties; Injunction

Sec. 12. Any person wilfully violating any of the provisions of this Article or wilfully violating any rule or regulation of the Board promulgated hereunder, shall be subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each and every day of such violation, and for each and every act of such violation, to be recovered in any court of competent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one defendant, in the county of the residence of any of them, or in the county in which the violation is alleged to have occurred, such suit to be instituted at the direction of the Board and conducted in the name of the State of Texas by the Attorney General. This penalty shall be in addition to any forfeiture or penalty that may be provided for by law. Any and all violations, and threatened violations, of this Article may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought, and in such cases the court shall issue such writs or injunctions, prohibitory or mandatory, as the facts justify.

#### Purpose of Article

Sec. 13. It is the purpose of this Article to provide for the protection of the public interest, the investor, and the shareholder of domestic stock insurance companies by regulating proxy solicitation

by domestic stock insurance companies and transactions by officers, directors and principal equity security holders of such companies and requiring appropriate reports thereof. To this end the misuse of information by certain insiders of domestic stock insurance companies shall be prevented and a full and fair disclosure of all material matters relevant to the exercise of the corporate franchise of a shareholder of such companies will be promoted and the free exercise of such franchise will be insured. In exercising the authority granted by this Article to make rules and regulations the Board shall promote the purposes of this Article to prevent misuse of information and to encourage good faith dealing and full and fair disclosure.

Filing Rules and Regulations

Sec. 14. All rules and regulations promulgated by the State Board of Insurance under authority of this Article shall be filed with the Secretary of State, and no such rules or regulations shall be of any force or effect until so filed.

[Acts 1965, 59th Leg., p. 435, ch. 222, § 1, eff. May 21, 1965.]

Article 21.48, derived from Acts 1957, 55th Leg., p. 1425, ch. 493, § 2, and repealed by Acts 1961, 57th Leg., p. 884, ch. 387, § 3, provided penalties for false returns, reports and statements. See, now, art. 21.47.

Section 3 of the repealing Act of 1961 read as follows:

"Provided, however, the repeal of this Article shall not abate or affect offenses that have arisen under the provisions of this Article prior to the effective date of its repeal."

Art. 21.48A. Prohibiting Certain Practices Relating to Insurance of Real Property

Definitions

Sec. 1. (1) "Mortgage Lender" means any person, partnership, corporation, or association, or any agent, loan agent, or servicing agent thereof, who loans money and receives a mortgage or deed of trust upon real property as security for such loan.

(2) "Borrower" means any person, partnership, corporation, or association who has or acquires a legal or equitable interest in real property which is or becomes subject to a mortgage or deed of trust.

Prohibited Practices

Sec. 2. No Mortgage Lender shall require a fee of over Seven and <sup>50</sup>/<sub>100ths</sub> Dollars (\$7.50) for the substitution by the Borrower of an insurance policy for another insurance policy still in effect, or require any fee for the substitution by the Borrower of an insurance policy for an existing policy upon termination of the existing policy, when such existing or substituted insurance policy is provided through an insurance company duly licensed to do business in the State of Texas pursuant to the provisions of this Insurance Code; provided, however, nothing herein shall prevent a Mortgage Lender who is a duly licensed local recording agent from soliciting insurance on the mortgaged property. No Mortgage Lender shall directly or indirectly impose or require as a condition of any financing or lending of money or the renewal or the extension thereof, that the

purchaser or borrower or his successors, shall procure any policy of insurance or the renewal or extension thereof, covering the property involved in the transaction, from or through any particular agent or agents, solicitor or solicitors, broker or brokers, insurer or insurers, or any other person or persons, or from or through any particular type or class of any of the foregoing.

Exceptions

Sec. 3. Nothing contained in Section 2 hereof shall be deemed to prevent such Mortgage Lender from exercising the rights to:

(a) require evidence, to be produced at a reasonable time prior to the commencement or renewal of the risk, that the insurance with a fixed termination date providing adequate coverage has been obtained in an amount sufficient to cover the debt or loan and will not be cancelled without reasonable notice to the lender;

(b) require insurance in an insurer authorized to do business and having a licensed resident agent in this state; and

(c) refuse to accept or approve insurance in any particular insurer on reasonable and nondiscriminatory grounds relating to its financial soundness, or its facility to service the policy.

Violations

Sec. 4. A Borrower may recover from any Mortgage Lender who violates any of the provisions of this Act civil damages in an amount not to exceed three (3) times the annual premium for the policy of insurance in force upon the mortgaged property. In the event that such policy of insurance be for a period more than one (1) year, the annual premium shall be calculated by dividing the number of years of the duration of such policy into the total premium specified therein for such entire period.

Application to Title Insurance

Sec. 5. Nothing contained herein shall apply to title insurance.

Effective Date

Sec. 6. This Act shall be effective from and after the 1st day of January, 1966.

[Acts 1965, 59th Leg., p. 280, ch. 120, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1447, ch. 428, § 1, eff. June 2, 1969.]

Art. 21.49. Catastrophe Property Insurance Pool Act

Declaration and Purpose

Sec. 1. It is hereby declared by the Legislature that an adequate market for windstorm, hail and fire insurance is necessary to the economic welfare of the State of Texas and that without such insurance the orderly growth and development of the State of Texas would be severely impeded. It is

therefore the purpose of this Act to provide a method whereby adequate windstorm, hail and fire insurance may be obtained in certain designated portions of the State of Texas.

Name of Act

Sec. 2. This Act shall be known as the "Texas Catastrophe Property Insurance Pool Act."

Definitions

Sec. 3. In this Act, unless the context clearly dictates to the contrary:

(a) "Board" means the State Board of Insurance of the State of Texas.

(b) "Association" means the Texas Catastrophe Property Insurance Association as established pursuant to the provisions of this Act.

(c) "Plan of Operation" means the plan for providing Texas windstorm and hail insurance in a catastrophe area and Texas fire and explosion insurance in an inadequate fire insurance area which plan has been approved by the Board for operation by the Association pursuant to the provisions of this Act, which plan may, among other things, provide for limits of liability for each structure insured, and/or the corporeal movable property located therein.

(d) "Texas Windstorm and Hail Insurance" means deductible insurance against direct loss to insurable property as a result of windstorm or hail as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

(e) "Texas Fire and Explosion Insurance" means insurance against direct loss to insurable property as a result of fire and explosion as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within the sea-coast territory as defined by the State Board of Insurance in the General Basis Schedule, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with building specifications set forth in the plan of operation shall not be an insurable risk under the terms of this Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the

time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation. When repair of damage to a structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation.

(g) "Net Direct Premiums" means gross direct written premiums less return premiums upon canceled contracts (irrespective of reinsurance assumed or ceded) written on property in this State as defined by the Board of Directors of the Association.

(h) "Catastrophe Area" means a city or county in which it may be determined by the Board, after notice of not less than 10 days and a hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within such city or county, due to such insurable property being located within a city or county subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Such designation shall be revoked by the Board if it determines, after notice of not less than 10 days and a hearing, that windstorm and hail insurance in such catastrophe area is no longer reasonably unavailable to a substantial number of owners of insurable property within such designated city or county. If the Association shall determine that windstorm and hail insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in any designated catastrophe area or areas, then the Association may request in writing that the Board revoke the designation of any or all of such catastrophe areas and, after notice of not less than 10 days and a hearing, but within 30 days of such hearing, the Board shall either approve or reject the Association's request and shall, if such request be approved, revoke such designation or designations.

(i) "Inadequate Fire Insurance Area" means a city or county which is, or is within an area, designated as a catastrophe area, as defined in Paragraph (h), above, and in which it may be determined by the Board, after notice of not less than 10 days and a hearing, that fire and explosion insurance is not reasonably available to a substantial number of owners of insurable property within such city or county. Such designation shall be revoked by the Board if it determines, after 10 days' notice and a hearing, that fire and explosion insurance in such inadequate fire insurance area is no longer reasonably una-

available to a substantial number of owners of insurable property within such designated city or county. If the Association shall determine that fire and explosion insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in any designated inadequate fire insurance area or areas, then the Association may request in writing that the Board revoke the designation of any or all such inadequate fire insurance areas, and, after notice of not less than 10 days and a hearing, but within 30 days of such hearing, the Board shall either approve or reject the Association's request and shall, if such request is approved, revoke such designation or designations.

(j) "Insurance" as hereinafter used in this Act shall mean the types of insurance described in Paragraphs (d) and (e) of this Section 3.

(k) "Insurers" means all property insurers authorized to transact property insurance in this State and specifically includes and makes this Act applicable to county mutual companies, Lloyds and reciprocal or interinsurance exchanges, but shall not include (a) farm mutual insurance companies as authorized in Chapter 16 of this Code; (b) county mutual fire insurance companies which are writing exclusively industrial fire insurance policies as defined in Article 17.02 of this Code; and (c) any companies now operating under Chapters 12 and 13 of Title 78 of the Revised Civil Statutes of Texas, 1925, as amended, which have heretofore been repealed.

Creation of the Texas Catastrophe Property Insurance Association

Sec. 4. (a) The Association which is hereby created shall consist of all property insurers authorized to transact property insurance in this State, except those companies that are prevented by law from writing coverages available through the pool on a Statewide basis. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence, as a condition of its authority to transact the business of insurance in this State. Any insurer which ceases to be a member of the Association shall remain liable on contracts of insurance entered into during its membership in the Association to the same extent and effect as if its membership in the Association had not been terminated.

(b) The organizational plan of certain types of insurers precludes such insurers from writing insurance coverage for the State of Texas, any city, political subdivision or agency of the State. When insuring property of the State of Texas, any city, political subdivision or agency of the State, the Association shall not cause such policies to be issued in such companies, nor shall such companies be in-

cluded as reinsurers for any policies of insurance in this category.

Operation of the Texas Catastrophe Property Insurance Association.

Sec. 5. (a) The Association shall, pursuant to the provisions of this Act and the plan of operation, and with respect to insurance on insurable property, have the power on behalf of its members to cause to be issued policies of insurance to applicants, to assume reinsurance from its members, and to cede reinsurance to its members and to purchase reinsurance on behalf of its members.

(b) On or before 10 days after the effective date of this Act the Board shall appoint a temporary board of directors of the Association which shall consist of seven representatives of members of the Association, selected so as to fairly represent various classes of member insurers. Such temporary board of directors shall prepare and submit a plan of operation and shall serve until the permanent board of directors shall take office in accordance with said plan of operation.

(c) All members of the Association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of such member written in this State during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the Association, as furnished to the Association by the Board after review of annual statements, other reports and other statistics, the Board shall deem necessary to provide the information herein required and which the Board is hereby authorized and empowered to obtain from any member of the Association, provided, however, that a member shall, in accordance with the plan of operation, be entitled to receive credit for similar insurance voluntarily written in the area designated by the Board and its participation in the writings in the Association shall be reduced in accordance with the provisions of the plan of operation. Each member's participation in the Association shall be determined annually in the same manner as the initial determination. For purposes of determining participation in the Association, two or more members having a common ownership or operating in this State under common management or control shall be treated as if they constituted a single member. Any insurer authorized to write and engaged in writing any insurance, the writing of which required such insurer to be a member of the Association, who becomes authorized to engage in writing such insurance after the effective date of this Act shall become a member of the Association on the 1st day of January immediately following such authorization and the determination of such insurer's participation in the Association shall be made as of the date of such membership in the same manner as for all other members of the Association.

(d) On or before 45 days after the effective date of this Act, the temporary board of directors of the Association shall submit to the Board for review and approval a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors and shall provide for the efficient, economical, fair, and nondiscriminatory administration of the Association. Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation, the establishment of necessary facilities, management of the Association, plan for assessment of members to defray losses and expenses, underwriting standards, procedures for the acceptance and cession of reinsurance, procedures for determining the amount of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and for such other provisions as may be deemed necessary by the board of directors and the Board to carry out the purposes of this Act. The proposed plan shall be reviewed by the Board and approved, unless it finds that such plan does not properly fulfill the purposes of this Act. In the review of the proposed plan the Board may, in its discretion, consult with the directors of the Association and may seek any further information which it deems necessary for a decision. If the Board approves the proposed plan, it shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Board disapproves all or any part of the proposed plan of operation, it shall return the same to the directors with its written statement setting forth the reasons for the disapproval and any recommendations it may wish to make. The directors may alter the plan in accordance with the recommendations of the Board or shall, within 15 days from the date of disapproval, return a new plan to the Board. In the event the Association has not proposed a plan satisfactory to the Board on or before the 14th day of May, 1971, the Board shall certify and adopt a plan under which the Association shall operate.

The Directors of the Association may, subject to the approval of the Board, amend the plan of operation at any time.

In the absence of an appeal, the Association shall adopt amendments to the plan proposed by the Board within 30 days.

#### Board Orders

Sec. 5A. (a) After notice and a hearing as provided in Subsection (b) of this section, the Board may issue any orders which it considers necessary to carry out the purposes of this Act including, but not limited to, maximum rates, competitive rates, and policy forms.

(b) Before an order is adopted by the Board, it shall post notice of a hearing on the order at the Secretary of State's office in the State Capitol and

shall hold a hearing to consider the proposed order. Any person may appear and testify for or against the adoption of the order.

#### Eligibility: Application

Sec. 6. (a) Any person having an insurable interest in insurable property located in an area designated by the Board shall be entitled to apply to the Association for insurance provided for under the plan of operation and for an inspection of the property under such rules and regulations, including an inspection fee, if any, as determined by the Board of Directors of the Association and approved by the State Board of Insurance. The term "insurable interest" as used in this subsection shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage. Application shall be made on behalf of the applicant by a Local Recording Agent and shall be submitted on forms prescribed by the Association. The application shall contain a statement as to whether or not the applicant has or will submit the premium in full from personal funds, or if not, to whom a balance is or will be due.

(b) If the Association determines that the property is insurable, the Association, upon payment of the premium, shall cause to be issued a policy of insurance as may be provided in the plan for a term of one year.

In the event an agent or some other person, firm, or corporation shall finance the payment of all or a portion of the premium and there is a balance due for the financing of such premium and such balance, or any installment thereof, is not paid within 10 days after the due date, the agent or other person, firm, or corporation to whom such balance is due may request cancellation of the insurance by returning the policy, with proof that the insured was notified of such return, or by requesting the Association to cancel such insurance by notice mailed to the insured and any others shown in the policy as having an insurable interest in the property. Upon completion of cancellation, the Association shall refund the unearned premium, less any minimum retained premium set forth in the plan of operation, to the person, firm, or corporation to whom the unpaid balance is due. In the event an insured requests cancellation of insurance, the Association shall make refund of such unearned premium payable to the insured and the holder of an unpaid balance. The Local Recording Agent, who submitted the application, shall refund the commission on any unearned premium in the same manner.

(c) Any policy issued pursuant to the provisions of this Act may be renewed annually, upon application therefor, so long as the property continues to meet the definition of "insurable property" set forth in Section 3 of this Act.

(d) Deleted by Acts 1973, 63rd Leg., p. 1043, ch. 406, § 4.

## Deletion of Coverages From Other Policies

Sec. 7. The Board shall prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Association and shall promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms.

## Rates, Rating Plans and Rate Rules Applicable

Sec. 8. (a) The Association shall file with the Board every manual of classifications, rules, rates which shall include condition charges, every rating plan, and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the character and the extent of the coverage contemplated and shall be accompanied by the policies and endorsements forms proposed to be used, which said forms and endorsements may be designed specifically for use by the Association and without regard to other forms filed with, approved by, or promulgated by the Board for use in this State.

(b) For the purpose of making such filing the Association may utilize filings made by licensed rating organizations and it may utilize the loss or expense statistics or recommendations collected and furnished to the Board by an advisory organization authorized under Article 5.73, Insurance Code of Texas.

(c) Any filing made by the Association pursuant hereto shall be submitted to the Board and as soon as reasonably possible after the filing has been made the Board shall, in writing, approve, modify, or disapprove the same; provided that any filing shall be determined approved unless modified or disapproved within 30 days after date of filing.

(d) If at any time the Board finds that a filing so approved no longer meets the requirements of this Act, it may, after a hearing held on not less than 20 days' notice to the Association specifying the matters to be considered at such hearing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this Act and shall be effective not less than 30 days after its issuance.

(e) All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to the past and prospective loss experience within and outside the State of hazards for which insurance is made available through the plan of operation, if any, to expenses of operation including acquisition costs, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the State.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accord-

ance with rating plans which establish standards for measuring variations in such risks on the basis of any or all of the factors mentioned in the preceding paragraph. Such rates may include rules for classification of risks insured hereunder and rate modifications thereof. All such provisions, however, as respects rates, classifications, standards and premiums shall be without prejudice to or prohibition of provision by the Association for consent rates on individual risks if the rate and risk are acceptable to the Association and as is similarly provided for, or as is provided for, in Article 5.26(a), Texas Insurance Code, and this provision or exception on consent rates is irrespective of whether or not any such risk would otherwise be subject to or the subject of a provision of rate classification or eligibility.

(3) Rates shall be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer.

(4) Commissions paid to agents shall be reasonable, adequate, not unfairly discriminatory and nonconfiscatory.

(f) For the purpose of this Act the applicant under Section 6(a) hereof shall be considered to have consented to the appropriate rates and classifications authorized by this Act irrespective of any and all other rates or classifications.

(g) All premiums written and losses paid under this Act as appropriate shall be included in applicable classifications for general rate making purposes.

(h) Except as the State Board of Insurance shall determine to be necessary after a hearing thereon, or except as provided in "consent to rate" statutes, any rates established under the provisions of the Insurance Code covering any risks or classes of risks which are located inland of the Intracoastal Canal on the Texas coastline (or inward of the boundary here authorized to be established by the State Board of Insurance amending such Intracoastal Canal boundary), may not be more than the maximum rates set by the Board under Subchapter C, Chapter 5, Texas Insurance Code,<sup>1</sup> for similar risks or classes of risks under the same lines and kinds of insurance. The maximum rates applicable to risks and classes of risks located inland of the Intracoastal Canal on the Texas coastline shall apply also to similar risks and classes of risks located seaward of the Intracoastal Canal if the property is protected by a sea wall constructed by the Corps of Engineers, or if it is determined by the Board that the property or risk is protected by other adequate structure or by any natural physical feature of the terrain that provides protection, and the State Board of Insurance may adjust rates to take into account the degree of such protection.

If valid flood or rising water insurance coverage exists and is maintained on any risk being insured in the pool the State Board of Insurance may provide for a rate and reduction in rate of premium as may be appropriate.

The State Board of Insurance may make provision by rule and regulation requiring catastrophe reserves in respect of the premium received on risks or classes of risks located seaward of the boundary of the Intracoastal Canal and may require catastrophe reserves on risks or classes of risks located inland of the boundary of the Intracoastal Canal and as such boundary may be amended. The amount required to be reserved for catastrophes (as such catastrophes are defined by the Board) shall be that portion of the pure premium as is actuarially made attributable, as ascertained by the Board, to prospective catastrophic loss. The portion of the pure premium attributable to prospective catastrophic loss shall not be income and shall be unearned until the occurrence of an applicable catastrophe as defined and shall be held in trust by the pool or trustee of the pool until losses are paid therefrom under such reasonable rules and regulations as the State Board of Insurance shall prescribe or approve.

<sup>1</sup> Article 5.25 et seq.

#### Appeals

Sec. 9. Any person insured pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling or decision of the Association, may, within 30 days after such act, ruling or decision, appeal to the Board. In the event the Association is aggrieved by the action of the Board with respect to any ruling, order, or determination of the Board, it may, within 30 days after such action, make a written request to the Board for a hearing thereon. The Board shall hear the Association, or the appeal from an act, ruling or decision of the Association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the Association making such request or the person, or his duly authorized representative, appealing from the act, ruling or decision of the Association. Within 30 days after such hearing, the Board shall affirm, reverse or modify its previous action or the act, ruling or decision appealed to the Board. Pending such hearing and decision thereon, the Board may suspend or postpone the effective date of its previous rule or of the act, ruling or decision appealed to the Board. The Association, or the person aggrieved by any order or decision of the Board may thereafter appeal to the District Court of Travis County, Texas, and not elsewhere, in accordance with Article 1.04(f) of the Insurance Code of Texas.

#### Immunity From Liability

Sec. 10. There shall be no liability on the part of and no cause of action of any nature shall arise against the Board or any of its staff, the Association or its agents or employees, or against any participating insurer or its agents or employees, for any inspections made under the plan of operation or any statements made in good faith by them in any reports or communications concerning risks submitted to the Association, or at any administrative

hearings conducted in connection therewith under the provisions of this Act.

#### Indemnification

Sec. 11. Each person serving as a director of the Association, each member of the Association, and each officer and employee of the Association shall be indemnified by the Association against all costs and expenses actually and necessarily incurred by him or it in connection with the defense of any action, suit, or proceeding in which he or it is made a party by reason of his or its being or having been a director or member of the Association, or an officer or employee of the Association except in relation to matters as to which he or it has been judged in such action, suit or proceeding to be liable by reason of misconduct in the performance of his or its duties as a director of the Association or a member or officer or employee of the Association, provided, however, that this indemnification shall in no way indemnify a member of the Association from participating in the writings, expenses, profits, and losses of the Association in the manner set out in this Act. Indemnification hereunder shall not be exclusive of other rights to which such member or officer may be entitled as a matter of law.

#### Annual Report

Sec. 12. The Association shall file in the office of the Board annually a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year at such times and covering such periods as may be designated by the Board. Such statement shall contain such matters and information as are prescribed by the Board and shall be in such form as is required by it.

#### Effective Date

Sec. 13. This Act shall become effective from and after passage.

#### Conflicting Laws

Sec. 14. All laws or parts of laws in conflict herewith are hereby repealed to the extent necessary to accomplish the purposes of this Act.

#### Partial Invalidity

Sec. 15. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 16. [Emergency provision].

#### Codification

Sec. 17. This Act is hereby codified as Article 21.49 of the Texas Insurance Code.

#### Application of Act

Sec. 18. This Act does not apply to farm mutual insurance companies, as defined in Article 16.01 of

the Insurance Code, nor does it apply to any existing company chartered under old Chapter 12, Title 78, Revised Civil Statutes of Texas, 1925, repealed by Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, Chapter 40.

[Acts 1971, 62nd Leg., p. 843, ch. 100, eff. April 29, 1971; Acts 1971, 62nd Leg., p. 2862, ch. 940, § 1, eff. June 15, 1971; Acts 1972, 62nd Leg., 4th C.S., p. 45, ch. 21, §§ 1, 2, eff. Nov. 2, 1972; Acts 1973, 63rd Leg., p. 1042, ch. 406, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1043, ch. 406, §§ 3 to 5, eff. Aug. 27, 1973.]

Two other articles numbered 21.49 were added by Acts 1971, 62nd Leg., p. 1334, ch. 356, § 1, and Acts 1971, 62nd Leg., p. 2905, ch. 961, § 1, which were redesignated as articles 21.49-1 and 21.49-2, respectively.

### Art. 21.49-1. Insurance Holding Company System Regulatory Act

#### Findings

Sec. 1. (a) It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:

(1) engage in activities which would enable them to make better use of management skills and facilities;

(2) have free access to capital markets which could provide funds for insurers to use in diversification programs;

(3) implement sound tax planning conclusions; and

(4) serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:

(1) control of an insurer is sought by persons who would utilize such control adversely to the interest of policyholders or shareholders;

(2) acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this State;

(3) an insurer which is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) an insurer pays dividends to shareholders which jeopardize the financial condition of such insurer.

(c) It is hereby declared that the policies and purposes of this article are to promote the public interest by:

(1) facilitating the achievement of the objectives enumerated in Subsection (a);

(2) requiring disclosure of pertinent information relating to and approval of changes in control of an insurer;

(3) requiring disclosure and approval of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and

(4) providing standards governing material transactions between the insurer and its affiliates.

(d) It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this State shall exercise regulatory authority over domestic insurers and, unless otherwise provided in this article, not over non-domestic insurers, with respect to the matters contained herein.

#### Definitions

Sec. 2. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) Affiliate. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) Commissioner. The term "Commissioner" shall mean the Commissioner of Insurance, his deputies, or the State Board of Insurance, as appropriate.

(c) Control. The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing, 10 percent or more of the voting securities or authority of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 3(i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it

necessary or appropriate in the public interest or for the protection of the policyholders or stockholders of the insurer that the person be deemed to control the insurer.

(d) Holding Company. The term "holding company" means any person who directly or indirectly controls any insurer.

(e) Controlled Insurer. The term "controlled insurer" means an insurer controlled directly or indirectly by a holding company.

(f) Controlled Person. The term "controlled person" means any person, other than a controlled insurer who is controlled directly or indirectly by a holding company.

(g) Insurance Holding Company System. The term "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(h) Insurer. The term "insurer" shall include all insurance companies organized or chartered under the laws of this State, or licensed to do business in this State, including capital stock companies, mutual companies, title insurance companies, fraternal benefit societies, local mutual aid associations, Statewide mutual assessment companies, county mutual insurance companies, Lloyds' Plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(i) Person. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(j) Securityholder. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(k) Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(l) Voting Security. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

(m) Notwithstanding any other provision of this article, the following shall not be deemed holding companies: the United States, a state or any political subdivision, agency, or instrumen-

tality thereof, or any corporation which is wholly owned directly or indirectly by one or more of the foregoing.

(n) Notwithstanding any other provision of this article, this article shall not be applicable to any insurance holding company system in which the insurer, the holding company, if any, the subsidiaries, if any, the affiliates, if any, and each and every other member thereof, if any, is privately owned by not more than five (5) securityholders, each of whom is and must be an individual or a natural person, and the commissioner has found that it is not necessary that such holding company system be regulated under this article and has issued a total or partial exemption certificate to such holding company which shall effect the exemption until revoked by the commissioner.

#### Registration of Insurers

Sec. 3. (a) Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or non-domestic insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article. Any insurer which is subject to registration under this section shall register within 60 days after the effective date of this article or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(1) the identity of every member of the insurance holding company system;

(2) the capital structure, general financial condition, ownership and management of the insurer, its holding company, and the insurer's subsidiaries and, if deemed necessary in the judgment of the commissioner, any of its affiliates;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its holding company, its subsidiaries, or its affiliates:

(i) loans, other investments, or purchases, sales or exchanges of securities of any of

the affiliates by the insurer or of the insurer by any of its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(vi) reinsurance agreements covering one or more lines of insurance of the ceding company;

(4) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner; and

(5) such filing shall include a copy of the charter or articles of incorporation and bylaws of such insurer's holding company and such insurer's subsidiaries and, if deemed necessary in the judgment of the commission, any of its affiliates.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to Section 3(b), or the amendments thereto pursuant to Section 3(d), if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation, or order provided otherwise, either single transactions or the cumulative total of all transactions involving sales, purchases, exchanges, loans or extensions of credit, or investments, which involve either one-half of one percent or less of an insurer's admitted assets, or five percent or less of an insurer's surplus, determined by whichever is the lesser, as of the 31st day of December next preceding, shall not be deemed material for purposes of this section, but any such single transaction or the cumulative total of such transactions in excess of the lesser of such percentages shall be deemed material.

(d) Amendments to Registration Statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition; provided, however, that subject to Subsection (c) of Section 4, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof; and provided further that any transaction

authorized by Section 4(d) hereof need not be reported under this subsection.

(e) Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated Filing. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this State and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection (a) and to file all information and material required to be filed under this section.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

#### Transactions Within an Insurance Holding Company System

Sec. 4. (a) Transactions with Affiliates. Material transactions by registered insurers with their holding companies, subsidiaries, or affiliates shall be subject to the following standards:

- (1) the terms shall be fair and equitable;
- (2) charges or fees for services performed shall be reasonable;
- (3) the books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions;
- (4) expenses incurred and payments received shall be allocated to the insurer on an equitable

basis in conformity with customary insurance accounting principles consistently applied; and

(5) the insurer's surplus as regards policyholders following any dividends or distributions to the holding company or shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of Surplus. For the purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in subsidiaries made pursuant to Section 6. The commissioner may treat any such investment as a nonadmitted or disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) Dividends and Other Distributions. (1) No insurer subject to registration under Section 3 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(2) For purposes of this section an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) 10 percent (20 percent if such insurer is a title insurer) of such insurer's surplus as regards policyholders as of the

31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life or title insurer, or the net investment income, if such insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the commissioner has approved the payment of such dividend or distribution or (ii) the commissioner has not disapproved such payment within the 30-day period referred to above.

(d) Commissioner's Approval Required. (1) The prior written approval of the commissioner shall be required for the following transactions between a domestic insurer and any person in its holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than either five percent of the insurer's admitted assets or 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st of December next preceding; provided, however, that the commissioner must give his decision of either approval or disapproval within 90 days after notification by the insurer and his failure to so act within such 90 days shall constitute approval of the transaction.

(2) The following transactions between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any such transaction at least 30 days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(i) sales, purchases, exchanges, loans or extensions of credit, or investments, involving either more than one-half of one percent but less than five percent of the insurer's admitted assets, or more than five percent but less than 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st day of December next preceding;

(ii) reinsurance treaties or agreements;

(iii) rendering of services on a regular or systematic basis; or

(iv) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders or stockholders or of the public.

(3) Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of a non-controlled insurer, would be otherwise contrary to law.

(4) The commissioner, in reviewing transactions hereunder, shall consider whether the transactions

comply with the standards set forth in Subdivision (a) hereof and whether they may adversely affect the interest of policyholders. Any disapproval by the commissioner of any such transactions shall set forth the specific reasons for such disapproval.

(5) The approval of any transaction under this section shall be deemed an amendment under Section 3(d) to an insurer's registration statement without further filing.

Acquisition or Retention of Control of or Merger With  
Domestic Insurer

Sec. 5. (a) Filing Requirements. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(2) For purposes of this section a "domestic insurer" shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Content of Statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (a) is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business

intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

(2) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in Subsection (a), which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in Subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements, or understandings with respect to any security referred to in Subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in Subsection (a) during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in Subsection (a) made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (a), and (if distributed) of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in Subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection (a) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in Subsection (a) is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative Filing Materials. If any offer, request, invitation, agreement, or acquisition referred to in Subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended,<sup>1</sup> or in circumstances

requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended,<sup>2</sup> or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) Approval by Commissioner; Hearings. (1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection (a) unless, after a public hearing thereon, he finds that:

(i) after the change of control the domestic insurer referred to in Subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair, prejudicial, hazardous, or unreasonable to policyholders or stockholders of the insurer and not in the public interest;

(vi) the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) such acquisition or merger would violate any law of this or any other state or of the United States.

(2) The public hearing referred to in Clause (1) hereof shall be held within 30 days after the statement required by Subsection (a) is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person

to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.

(e) Mailings to Shareholders; Payment of Expenses. All statements, amendments, or other material filed pursuant to Subsection (a) or (b), and all notices of public hearings held pursuant to Subsection (d), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions. The provisions of this section shall not apply to:

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in Subsection (a) who is a broker-dealer under state or federal securities laws of any voting security referred to in Subsection (a) which, immediately prior to consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the insurer with the Commissioner of Insurance. After the filing of such plan of merger or consolidation the transaction shall be subject to the provisions of Section 5 of this article. The Commissioner may exempt such transaction from any or all of the notice requirements of Section 5 of this article if he finds that the notice furnished to shareholders and security holders in connection with such merger or consolidation contained all material and information required under Section 5 of this article, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that all of 100% of the stock is initially and simultaneously purchased in order to effect a total reinsurance, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; or

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(g) Retention of Control. (1) The following conditions affecting any controlled insurer, regardless of when such control has been acquired, are violations of this article:

(i) the violation of this article, or other demonstration of untrustworthiness, by the insurer, its holding company or any controlling person, or any of the officers or directors of either; or

(ii) the violation of any provision of Chapter 15 of the Business and Commerce Code, Chapter 785, Acts of the 60th Legislature, 1967, as amended,<sup>3</sup> or any other antitrust law of this State by the insurer, the holding company or any affiliate.

If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to be served upon the insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the insurer's stockholders.

(h) Duty of Insurer. Unless subject to registration under Section 3, or unless it is a foreign insurer not subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article, or unless acquisition of its control is subject to Subsections (a), (b), and (c) hereof, every authorized insurer shall, on or before November 1, 1971, or within 30 days after any event requiring notice hereunder, whichever is later, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(i) Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(j) Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

<sup>1</sup> 15 U.S.C.A. § 77a et seq.

<sup>2</sup> 15 U.S.C.A. § 78a et seq.

<sup>3</sup> Business and Commerce Code, § 15.01 et seq.

#### Subsidiaries of Insurers

Sec. 6. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries, as an investment but only as permitted by the investment provisions of the Insurance Code.

#### Management of Controlled Insurers

Sec. 7. (a) Notwithstanding the control of an authorized insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this code.

(b) Nothing herein shall preclude an authorized insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of Paragraph (4) of Section 4(a) hereof.

#### Prohibition of Indirect Action.

Sec. 8. No holding company or controlled person shall directly or indirectly or through another person do or cause to be done for or on behalf of the controlled insurer any act intended to affect, influence, change, or alter the insurance operations of the insurer which, if done by the insurer acting alone, would violate this code. Provided, however, this section shall not limit or prohibit such holding company or person within the holding company system from doing any type of business that would be normal and natural to such person if it were not within the holding company system so long as such business is conducted on behalf of such person.

#### Examination

Sec. 9. (a) Power of the Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other articles of this code relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under Section 3 to produce such records, books, or other information papers in the possession of the insurer, its holding company, its subsidiaries, or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, every holding company, every controlled person, subsidiary, or affiliate within the insurance holding company system shall be subject to examination by order of the commissioner if he has cause to believe that the operations of such persons may materially affect the operations, management, or financial condition of any controlled insurer within the system and that he is unable to obtain relevant information from such controlled insurer. The grounds relied upon by the commissioner for such examination shall be stated in his order, which order shall be subject to judicial review only at the instance of the person sought to be examined. Such examination shall be confined to matters specified in the order. The cost of such examination shall be assessed against the person examined and no portion thereof shall thereafter be reimbursed to it directly or indirectly by the controlled insurer.

(b) Purpose and Limitation of Examination. The commissioner shall exercise his power under Subsection (a) above only if the examination of the insurer under other sections of this code is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer complying with the commissioner's order and producing for examination records, books, and papers pursuant to Subsection (a) above shall be liable for and shall pay the expense of such examination in accordance with Article 1.16 of this code.

#### Confidential Treatment

Sec. 10. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 9 and all information reported pursuant to Section 3, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the

commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

#### Rules and Regulations

Sec. 11. The State Board of Insurance may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be consistent with and to carry out the provisions of this article and to govern the conduct of its business and proceedings hereunder. Respecting any other provisions of this article, the board shall not have any power or authority to change the meaning of any provision of this article by rule or regulation or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this article.

#### Injunctions: Prohibitions Against Voting Securities: Sequestration of Voting Securities

Sec. 12. (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the State Board of Insurance or by the commissioner hereunder, the commissioner may apply to the district court for Travis County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this article or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(b) Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the State Board of Insurance or the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the State Board of Insurance or the commissioner hereunder, the insurer or the commissioner may apply to the

district court for Travis County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of Section 5 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any such security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the State Board of Insurance or the commissioner hereunder the district court for Travis County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this State.

#### Criminal Proceedings

Sec. 13. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a wilful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district attorney for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district attorney of Travis County against such insurer, or the responsible director, officer, employee, or agent thereof. Any insurer which wilfully violates this article may be fined not more than \$10,000. Any individual who wilfully violates this article may be fined not more than \$5,000 or, if such wilful violation involves the deliberate perpetration of a fraud upon an insurer, any subsidiary or policyholders, imprisoned not more than two years or both.

#### Receivership

Sec. 14. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten its insolvency or make the further transaction of its business hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in Articles 21.28 and 21.28-A of this code to take possession of the property of such domestic insurer and to conduct the business thereof.

Revocation, Suspension, or Non-renewal of Insurer's License

Sec. 15. Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusion of law.

Rescission, Revocation, and Reversal of Unauthorized Transactions

Sec. 16. Whenever it appears to the commissioner that any person has entered into any transaction or act without having first complied with the provisions of this article applicable to such transaction or act, and in violation hereof, the commissioner may, after giving notice and an opportunity to be heard, determine and order that such transaction or act be set aside, rescinded, revoked, reversed, and rendered void and of no force or effect, so that the parties to such transaction or act shall be returned to the position they would have occupied had not such transaction or act occurred in violation of this article.

Judicial Review; Mandamus

Sec. 17. (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom under the procedures provided in Article 1.04 of this code.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Travis County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

Applicability to Foreign Insurers

Sec. 18. Each Texas-licensed foreign insurer domiciled in a jurisdiction which has not, by statute or regulation, adopted controls considered by the Commissioner of Insurance of the State of Texas to be substantially similar to those contained in this Article shall be subject to all provisions of Article

21.49-1 of the Insurance Code the same as Texas domestic insurers and is, in the event of non-compliance therewith, subject to all of the remedies, penalties, and sanctions authorized by the Insurance Code, including, but not limited to, after notice and hearing, suspension or revocation of certificate of authority to do business in Texas. If, after the effective date of this Act, any domiciliary jurisdictions adopt controls considered by the Commissioner of Insurance of the State of Texas to be substantially similar to those contained in this Article, the commissioner may thereafter exempt insurers domiciled in said jurisdictions from the provisions of this Section 18 of Article 21.49-1.

[Acts 1971, 62nd Leg., p. 1334, ch. 356, § 1, eff. May 25, 1971; Acts 1973, 63rd Leg., p. 1066, ch. 409, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1074, ch. 412, §§ 1, 2, eff. June 14, 1973.]

Sections 2 and 3 of the 1971 act provided: "Sec. 2. All laws and parts of laws in this State inconsistent with this article are hereby superseded with respect to matters covered by this article.

"Sec. 3. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are severable."

Acts 1973, 63rd Leg., p. 1066, ch. 409, which by §§ 1 and 2 amended §§ 18 and 5(f), respectively, of this article, provided in § 3: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable."

Acts 1973, 63rd Leg., p. 1074, ch. 412, which by §§ 1 and 2 amended §§ 5(f) and 13, respectively, of this article, provided in § 3: "The provisions of Section 2 hereof shall not be deemed to relieve any penalty against any person for acts committed prior to the effective date of this Act nor make lawful any act unlawful prior to the effective date of this Act."

Art. 21.49-2. Cancellation and Nonrenewal of Certain Policies

The State Board of Insurance is authorized and directed to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of family automobile and residential fire insurance and homeowners policies, including notice requirements thereof, applicable to all insurance companies writing the above-mentioned policies. The State Board of Insurance is also authorized, as it finds necessary, to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of all other policies of insurance regulated by the Board pursuant to Chapter 5, Texas Insurance Code,<sup>1</sup> including notice requirements thereof, applicable to all such companies. In prescribing and adopting such rules and regulations, the Board will give consideration to the reasonable needs of the public and to the operations of the insurance companies. The Board shall have authority to alter or amend, as it deems necessary, any and all of the rules and regulations prescribed and adopted by it.

[Acts 1971, 62nd Leg., p. 2905, ch. 961, § 1, eff. June 15, 1971.]

<sup>1</sup>Article 5.01 et seq.  
Section 2 of the 1971 act provided: "If any word, sentence, or provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable."

## Art. 21.50. Mortgage Guaranty Insurance

## Definitions

Sec. 1. The definitions set forth herein shall govern the construction of the terms used in this Article but shall not affect any other provisions of this Code.

## (a) "Mortgage guaranty insurance" means:

(1) Insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on such real estate is a residential building or buildings designed for occupancy by not more than four families, or a condominium unit.

(2) Insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on such real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes.

(3) Insurance against financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate, provided the improvement on such real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(b) "Authorized real estate security" for the purposes of Paragraphs (1) and (2) of Subdivision (a) of this section means an amortized note, bond or other evidence of indebtedness, secured by a mortgage, deed of trust, or other instrument constituting a first lien or charge on real estate; provided:

(1) The real estate loan secured in such manner is one which a bank, savings and loan association, or an insurance company, which is supervised and regulated by a department of this State or an agency of the federal government or an approved seller-servicer of the Federal National Mortgage Association, is authorized to make.

(2) The improvement on such real estate is a building or buildings designed for occupancy as specified by Paragraphs (1) and (2) of Subdivision (a) of this section.

(3) The lien on such real estate may be subject and subordinate to the following:

(i) The lien of any public bond, assessment, or tax, when no installment, call or payment of or under such bond, assessment or tax is delinquent.

(ii) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way of support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon such real property under which rents or profits are reserved to the owner thereof.

(c) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles or losses.

## Qualifications of Insurers

Sec. 2. Qualifications for mortgage guaranty insurers shall be as follows:

(1) An insurer, in order to qualify for writing mortgage guaranty insurance, must have the same minimum capital and surplus as that required of a company by Chapter 8, Texas Insurance Code.<sup>1</sup>

(2) A foreign or alien insurer writing mortgage guaranty insurance shall not be eligible for the issuance of a certificate of authority in Texas unless it has demonstrated a satisfactory operating experience in its state of domicile.

(3) A mortgage guaranty insurance insurer which anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this State nor for the renewal thereof.

(4) A mortgage guaranty insurer which anywhere transacts the classes of insurance defined in Paragraphs (2) and (3) of Subdivision (a) of Section 1 is not eligible for the issuance of a certificate of authority to transact in this State the class of mortgage guaranty insurance defined in Paragraph (1) of Subdivision (a) of Section 1.

## Unearned Premium Reserve; Computation

Sec. 3. The unearned premium reserve on mortgage guaranty insurance shall be computed in accordance with the other applicable sections of this Code, except that on all policies covering a risk period of more than one year the unearned premium reserve shall be computed in accordance with standards promulgated by the State Board of Insurance after appropriate hearings.

## Loss Reserve; Determination

Sec. 4. On such insurance, the case basis method shall be used to determine the loss reserve, which shall include a reserve for claims incurred but not reported.

## Contingency Reserve; Withdrawals; Releases to Surplus

Sec. 5. In addition to the capital, surplus and reserves specified in Sections 2, 3 and 4 hereof, each mortgage guaranty insurer shall establish a contingency reserve, which shall be reported as a liability in the insurer's financial statements. To provide for and maintain such reserve, the company shall annually contribute to such reserve fifty per cent (50%) of the earned premiums on its mortgage guaranty insurance business. The earned premiums so reserved may be released to the insurer's surplus, annually, after they have been so maintained for 120 months. However, withdrawals may be made from such reserve by the insurer in any given year in which the insurer can demonstrate to the State Board of Insurance that the incurred losses for such year exceed thirty-five per cent (35%) of the corresponding earned premiums for such year. The amount so withdrawn and released for such losses shall reduce any subsequent annual release to surplus from the established contingency reserve by an amount equal to the amount so withdrawn, and any balance in excess of the normal annual release from such reserve shall carry over and be deducted from subsequent annual releases.

## Outstanding Total Liability; Limit

Sec. 6. A mortgage guaranty insurer shall not at any time have outstanding a total liability, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding 25 times its capital, surplus and contingency reserve, such liability to be computed on the basis of the insurer's liability under its election as provided in Section 7 and such liability for leases to be computed on the basis of the insurer's liability as determined by the State Board of Insurance. In the event that any insurer has outstanding total liability exceeding 25 times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total liability no longer exceeds 25 times its capital, surplus and contingency reserve.

## Limit on Coverage to Amount of Indebtedness; Election to Pay Entire Indebtedness

Sec. 7. A mortgage guaranty insurer shall limit its coverage for the class of insurance defined in Paragraphs (1) and (2) of Subdivision (a) of Section 1 to a maximum of twenty-five per cent (25%) of the entire indebtedness to the insured, or in lieu thereof, a mortgage guaranty insurer may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

## Loans Secured by Properties in Single-housing or Contiguous Tracts; Limit

Sec. 8. A mortgage guaranty insurer shall not insure loans secured by properties in a single hous-

ing tract or a contiguous tract in excess of ten per cent (10%) of the insurer's capital, surplus and contingency reserve. In determining the amount of such risk, applicable reinsurance in any assuming insurer authorized to transact mortgage guaranty insurance in this State shall be deducted from the total direct risk insured. "Contiguous," for the purposes of this section, means not separated by more than one-half mile.

## Advertising of "Insured Loans"

Sec. 9. No bank, savings and loan association or insurance company, or an approved seller-servicer of the Federal National Mortgage Association, any of whose authorized real estate securities are insured by a mortgage guaranty insurance company, may state in any brochure, pamphlet, report or any form of advertising that the real estate loans of the bank, savings and loan association, insurance company or an approved seller-servicer of the Federal National Mortgage Association are "insured loans" unless the brochure, pamphlet, report or advertising also clearly states that the loans are insured by private insurers and the names of the private insurers are given and shall not make any such statement at all unless such insurance is by an insurer certificated to write in this State.

## Application of Other Laws

Sec. 10. All the applicable provisions of this Code and of other statutes of this State, except as the same may be in conflict herewith, shall apply to the operation and conduct of mortgage guaranty insurance business.

[Acts 1971, 62nd Leg., p. 1066, ch. 222, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 22, ch. 19, § 1, eff. March 28, 1973.]

<sup>1</sup> See article 8.05.

**Art. 21.51. Penalty for Violating Insurance Laws**

Whoever violates any provision of the laws of this State regulating the business of life, fire, or marine insurance, shall, where the punishment is not otherwise provided for, be fined not less than five hundred not [nor] more than one thousand dollars. [1925 P.C.]

## SUBCHAPTER F. JUDICIAL REVIEW

**Art. 21.44. Judicial Review of Board Action**

Except where otherwise provided for under the provision of the Insurance Code, if any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the Board of Insurance Commissioners, such dissatisfied company or party at interest after failing to get relief from the Board of Insurance Commissioners, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a differ-

ent nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1955, 54th Leg., p. 933, ch. 364, § 1.]

Another Article 21.44 was added to Subchapter E, Miscellaneous Provisions, by Acts 1955, 54th Leg., p. 413, ch. 117, § 53. See Article 21.44, ante.

**CHAPTER 22. STIPULATED PREMIUM INSURANCE COMPANIES**

Article

- 22.01. Who May Incorporate.
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- 22.20. Conversion to Chapter Three (3) Company.
- 22.21. Formation of Additional Associations Planned.
- 22.22. Insolvency; Conservatorship; Receiver.
- 22.23. Issuance of Life Insurance Policies by Stipulated Premium Companies.

**Art. 22.01. Who May Incorporate**

Sec. 1. Any five (5) or more, but not to exceed thirty-five (35), citizens of this state may associate themselves for the purpose of forming a stipulated premium life insurance company or a stipulated premium accident insurance company or a stipulated premium life and accident, health and accident, or life, health and accident insurance company. In order to form such a company, the corporators shall sign and acknowledge its articles of incorporation and file the same in the office of the State Board of Insurance. Such articles shall specify:

- 1. The name and place of residence of each of the incorporators;

- 2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to the name of any other insurance company as to be likely to mislead the public;

- 3. The location of its home office;

- 4. The kind or kinds of insurance business it proposes to transact;

- 5. The amount of its capital stock, not less than Fifteen Thousand Dollars (\$15,000.00); all of which capital stock must be fully subscribed and paid up and in the hands of the corporators before said articles of incorporation are filed. Such stipulated premium insurance company shall not be incorporated unless at the time of incorporation such company is possessed of at least Seven Thousand Five Hundred Dollars (\$7,500.00) surplus, in addition to its capital; provided the amount of such surplus need not be stated in its articles of incorporation. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this state or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter; and shall not include any real estate; provided, however, fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans. After the granting of charter, the surplus may be invested as otherwise provided in this Chapter. Notwithstanding any other provisions of this Chapter, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article;

- 6. The period of time it is to exist, which shall not exceed five hundred (500) years;

- 7. The number of shares of such capital stock;

- 8. Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein.

Sec. 2. Every stipulated premium company incorporated or transacting business in this state shall be subject to the provisions of this Chapter 22, unless otherwise expressly provided by this Code and no other insurance law of this state shall apply to any corporation chartered under this Chapter and no law hereafter enacted shall apply to stipulated premium companies unless they be expressly designated therein.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.02. Shares of Stock**

The stock of any stipulated premium company shall be of par value. Each share shall be for not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00). Such stipulated premium companies may issue and dispose of their autho-

rized shares having a par value for money or those notes, bonds and mortgages, of which Art. 22.01 of this Chapter authorizes for minimum capital and such shares shall thereafter be nonassessable. In the event all of the shares of stock, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares of stock are sold and issued, the company shall file with the State Board of Insurance, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the number of shares so issued and the actual consideration received by the company for such shares.  
[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

### Art. 22.03. Application, Charter and Organization

Sec. 1. As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the State Board of Insurance the following:

1. An application for charter on such form and including therein such information as may be prescribed by the Board;
2. The articles of incorporation as provided in this Code;
3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than Fifteen Thousand Dollars (\$15,000.00) capital and that such company is possessed of at least Seven Thousand Five Hundred Dollars (\$7,500.00) surplus, as required by law, in addition to its capital, which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;
4. A charter fee of Twenty-five Dollars (\$25.00).

Sec. 2. When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to the Attorney General of Texas and to all interested parties, including any parties who have thereto-

fore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Sec. 3. In considering any such application the Board shall, within thirty (30) days after public hearing, determine whether or not:

- (a) The minimum capital and surplus as required by law is the bona fide property of the company;
- (b) The proposed officers, directors and managing executives have sufficient insurance experience ability and standing to render success of the proposed company probable;
- (c) The applicants are acting in good faith.

Sec. 4. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing, giving the reason therefor. Otherwise, the Board shall approve the application and submit such application, together with the articles of incorporation and the affidavit, to the Attorney General for examination. If the application, articles of incorporation, the affidavit and the procedure and action thereon shall be found by the Attorney General to be in accordance with the law of this state, he shall attach thereto his certificate to that effect, whereupon all such documents shall be deposited with the Board. Upon receipt by the Board of such documents so certified by the Attorney General, the Board shall record the same in a book kept for that purpose, and upon receipt of a fee of One Dollar (\$1.00), it shall furnish a certified copy of the same to the incorporators, upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company, and elect a Board of Directors, not less than five (5), composed of stockholders; which Board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The Board of Directors so elected shall serve until the second Tuesday in April thereafter, on which date, annually thereafter, there shall be held a meeting of the stockholders at the home

office, and a Board of Directors elected for the ensuing year. If the stockholders fail to elect directors at any such annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. The directors shall choose a President from their own number, and all other officers shall be chosen in accordance with the by-laws of the company, and none of such officers need be either a director or a stockholder except as required by the by-laws of such company. The duties and compensation of officers of such company shall be in accordance with the by-laws of the company, or, to the extent of the absence of provisions governing the same in the by-laws, then the duties and compensation of officers shall be defined and fixed by the directors. The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the Board or in any office of such company. A majority of the Board shall be a quorum for the transaction of such business. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the President and Secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case be reduced to less than the minimum amount of fully paid up capital stock required by applicable provisions of law. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.04. Amendment of Charter

At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful

amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the President and Secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock may in no case be reduced to less than One Hundred Thousand Dollars (\$100,000.00) except for the purpose of avoiding insolvency as provided in Art. 22.12 of this Chapter, but in such event never less than Fifteen Thousand Dollars (\$15,000.00). A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as evidence of stock in exchange for new certificates transferable on its books, in accordance with this Chapter and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.05. Original Examination and Certificate

When the first meeting of the stockholders shall be held and the officers of the company elected, the President or Secretary shall notify the State Board of Insurance and such Board shall thereupon immediately make or cause to be made at the expense of the company a full and thorough examination thereof. If it finds that all of the capital stock of the company amounting to not less than the minimum amount required by law has been fully paid up and is in the custody of the officers either in cash or securities of the class such companies are authorized by this Chapter to invest or loan their funds, it shall issue forthwith to such stipulated premium company a temporary certificate of authority limiting the activities of such stipulated premium company solely to the negotiating and obtaining of a direct reinsurance agreement with a company chartered and doing business under the provisions of Chapter 14<sup>1</sup> of the Insurance Code of Texas on the effective date of this Act. Such certificate of authority shall terminate twelve (12) months from its date, unless renewed by the State Board of Insurance for an additional period of twelve (12) months, provided that such stipulated premium company has not theretofore consummated a direct reinsurance agreement with such a company doing business under the provisions of Chapter 14 of the Insurance Code.

Before such temporary certificate of authority is issued, not less than two (2) officers of such company shall execute and file with the State Board of Insurance a sworn schedule of all the assets of the

company exhibited to the Board upon such examination showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company, and are worth the amount stated in such schedule.

In the event a direct reinsurance agreement be not so consummated within such twelve (12) months period, unless renewed by the State Board of Insurance for an additional period of twelve (12) months, the certificate of authority shall automatically terminate and the incorporators of such stipulated premium company shall forthwith surrender its charter to the State Board of Insurance for cancellation.

In the event a direct reinsurance agreement as provided in this Chapter is consummated with such a company doing business under the provisions of Chapter 14 of this code, the State Board of Insurance shall forthwith and in accordance with the provisions of Article 22.15 of this Code issue to such a company a regular certificate of authority to transact business in the State of Texas. Likewise, such certificate of authority shall provide for the type of insurance business which may be written by the stipulated premium company; if the Chapter 14 company was engaged in the life business or was a burial association, the stipulated premium company shall be entitled and authorized to write life insurance policies as regulated by the provisions of this Chapter, and if the Chapter 14 company was permitted by its charter to write accident insurance, or health and accident insurance, or life, health and accident insurance, then the stipulated premium company shall be so permitted.

As such stipulated premium company thereafter directly reinsures additional Chapter 14 companies chartered and doing business under the provisions of Chapter 14 of the Insurance Code of Texas, its regular certificate of authority shall be amended to write any type of such insurance coverage as those authorized for any such Chapter 14 company whose policies are so assumed by the stipulated premium company.

Any stipulated premium company holding a permanent certificate of authority on the effective date of this Act, and which permanent certificate of authority limits the territory of operation or writing of business of such company to an area or territory less than the entire State of Texas may, at any time thereafter, make application for, and thereafter be entitled to receive a permanent certificate of authority to operate and issue policies of insurance as so previously authorized (or as may thereafter be authorized by compliance with the provisions of this Chapter 22), anywhere within the State of Texas. [Acts 1961, 57th Leg., p. 345, ch. 180, § 1; Acts 1967, 60th Leg., p. 1831, ch. 708, § 2, eff. June 17, 1967.]

<sup>1</sup> Article 14.01 et seq.

#### Art. 22.06. Shall File Annual Statement

Each stipulated premium company shall after the first day of January of each year and before the

first day of April prepare under oath of two (2) of its officers and deposit in the office of the State Board of Insurance a statement accompanied with the fee for filing annual statements of Twenty Dollars (\$20.00) showing the condition of the stipulated premium company on the 31st day of December next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, monies received, and how expended during the year, and the number and amount of its policies in force on that date and the total amount of its policies in force, except that insureds under family group policies as defined in Art. 22.11, Section 1(b) of this Code will be accounted for only if a reserve is required as to such insured under said Art. 22.11, Section 1(b). The form of such annual statement shall be prepared and determined by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491, art. 22.06; Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.07. May Reinsure; Required Reinsurance

Sec. 1. Any stipulated premium company may reinsure on an individual indemnity policy basis with any legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00) any risk or part of a risk which the stipulated premium company may issue or assume, and upon such reinsurance proper credit therefor may be taken against the aggregate reserves required by Art. 22.11 of this Chapter.

Sec. 2. Until the surplus of any stipulated premium company is at least Fifty Thousand Dollars (\$50,000.00), no such stipulated premium company shall insure any life for more than One Thousand Dollars (\$1,000.00) in the event of death from natural causes nor more than Two Thousand Dollars (\$2,000.00) in the event of death from accidental causes, unless such stipulated premium company reinsures the amount of coverage above One Thousand Dollars (\$1,000.00) in the event of natural death and the amount of coverage above Two Thousand Dollars (\$2,000.00) in the event of accidental death with a legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00); provided, however, the provisions of this Section of this Art. 22.07 shall not apply to policies of insurance assumed by a stipulated premium company pursuant to the provisions of Art. 22.15 of this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491, art. 22.07; Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.08. Dividends; How Paid

No stipulated premium company shall declare or pay any dividends to its stockholders except from the profits made by said company not including

surplus arising from the sale of stock, and shall pay no dividends except stock dividends until: (a) the capital of said stipulated premium company shall be at least One Hundred Thousand Dollars (\$100,000.00); (b) the deficiency reserve as permitted by this Chapter has been retired; and (c) capital of said stipulated premium company is maintained at not less than One Hundred Thousand Dollars (\$100,000.00). Thereafter cash dividends may be paid in accordance with this Chapter.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.09. Compensation of Officers and Others; Including Pensions**

(a) No stipulated premium company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than Ten Thousand Dollars (\$10,000.00) to any person, firm or corporation, unless such payment be first authorized by a vote of the Board of Directors of such company, or by a committee of such Board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any stipulated premium company from entering into contracts with its agents for the payment of renewal commissions.

(b) The stockholders of any such stipulated premium company may authorize the inauguration of a plan or plans for the payment of pensions, retirement benefits or group insurance to its officers and employees. The stockholders may delegate to the Board of Directors authority and responsibility for the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans or any amendments thereof.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.10. To Deposit Funds in Name of Company**

Any director, member of a committee, or officer, or any clerk of a stipulated premium company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.11. Reserves**

Individual and Group Life Policies; Amount of Reserves;  
Calculation

Sec. 1. (a) Each stipulated premium individual life policy shall be reserved and each stipulated premium company shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by the company and ap-

proved by the State Board of Insurance, provided such reserves are at least equal, in the aggregate, to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one-half per cent (3½%) per annum. Any stipulated premium company is hereby authorized to use the 1956 Chamberlain Reserve Table.

(b) Family group life policies, upon which a group premium is charged and under which there is a varying benefit dependent upon the sequence of deaths, shall be reserved and each stipulated premium company shall, at the election of the stipulated premium company, maintain reserves on such family group policies in either one of the following methods of calculation: (1) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living two (2) oldest members of each such family group; the amount of insurance for such two (2) members shall be based on the assumption that the elder of such members will be the first to die; or (2) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die. Each such stipulated premium company shall be permitted to select the method it shall use to calculate such reserves.

Health, Accident and Sickness Policies

Sec. 2. All health, accident and sickness policies shall be reserved by the stipulated premium company and each stipulated premium company shall maintain reserves on such policies in the same manner as is required by the companies writing such coverage under the provisions of Chapter 3 of the Insurance Code of Texas, except that an unearned premium reserve shall not be required to be maintained during the first policy year.

Reinsurance Agreements; Deficiency Reserve

Sec. 3. (a) On all policies of a Chapter 14 company assumed under a direct reinsurance agreement as in this Chapter provided by a stipulated premium company, such stipulated premium company shall at the effective date of such reinsurance agreement calculate the amount of the required reserves in accordance with the provisions of this Article and shall also calculate and determine the amount of the net assets transferred to the stipulated premium company under such reinsurance agreement. In the event the net assets of the Chapter 14 company are insufficient to equal the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. Such deficiency reserve shall be allowed without creating the insolvency of the stipulated premium company, but the stipulated premium company must reduce said deficiency so determined by at least ten per cent (10%)

thereof during each year following the date of the reinsurance agreement, but commencing such reduction as to the next succeeding annual statement filing date so that at the date of the eleventh annual statement filing date after the effective date of said reinsurance agreement, the deficiency reserve will be fully paid and satisfied, together with assumed rate of interest thereon; provided, however, that such required reduction in the deficiency reserve shall never exceed the cumulative aggregate amount of ten per cent (10%) per annum.

(b) In the event the annual required reduction of the deficiency reserve is not accomplished as of December 31st of each year involved, the Board of Directors of the stipulated premium company shall by appropriate action increase rates by advancing the age of the insureds at issue date, or by some other equitable rate adjustment, so as to correct the failure to reduce the amount of the deficiency. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent.

#### Reserve Liability; Computation

Sec. 4. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each stipulated premium company which has outstanding policies of insurance. In making such computations, the said Board may use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by the stipulated premium company and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one-year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 22.

#### Securities; Class and Character

Sec. 5. Having determined the required reserve on all policies in force, but excluding the permissive deficiency reserves authorized by this Chapter 22, the State Board of Insurance shall require that the stipulated premium company have in securities of the class and character required by the laws of this state the amount of said reserves less the permissive deficiency reserves after all the debts and claims against it and the minimum capital required by this Chapter have been provided.

#### Increase of Rates on Policies; Insolvency

Sec. 6. In the event the stipulated premium company does not have the required reserves, less any permissive deficiency reserve, plus the minimum capital required by this Chapter, the Board of Directors of the stipulated premium company shall by appropriate action increase rates on policies in force

by advancing the age of the insureds at issue date or by some other equitable rate adjustment so as to correct such reserve inadequacy. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves as of the date in this Chapter provided, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent under the provisions of Art. 22.12 of this Chapter.

#### Premiums on Life Policies

Sec. 7. Premiums charged on all life policies issued by stipulated premium companies shall be at least equal to the renewal net premium calculated in accordance with the reserve standard adopted by the stipulated premium company and approved by the State Board of Insurance.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.12. Impairment of Capital Stock

Any stipulated premium company transacting business within this state, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent (33 $\frac{1}{3}$ %) thereof, computing its liabilities in the manner provided for in this Chapter of this Code, shall make good such impairment within sixty (60) days by:

(a) a reduction of its capital stock (provided such capital stock shall in no case be less than the minimum amount required of a stipulated premium company by this Chapter); or

(b) by rate adjustment where permitted by policy contract; or

(c) by both such methods; and failing to make good such impairment within said time shall forfeit its right to write new business in this state until said impairment shall have been made good.

The State Board of Insurance may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent (50%) thereof; computing its reserve liability in the manner provided by this Chapter for the computation of such reserve liability. No stipulated premium company shall write new business unless it is possessed of the minimum capital required by this Chapter 22, except to the extent it may be otherwise expressly authorized by this Chapter of this Code.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.13. Policy Form Approval

##### Life Policy Forms

Sec. 1. (a) Every policy of life insurance issued by a stipulated premium company shall state on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid. An application for each policy must

be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian. The policy, or the policy and the application if a copy of the application is attached to the policy, shall constitute the entire contract. If the policy is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten (10) point type in language approved by the State Board of Insurance. All statements in the application shall in the absence of fraud be regarded as representations and not warranties. All conditions of the policy must be stated therein. Each policy must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two (2) years from date of issue, except for nonpayment of premiums. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on premium rates in force at the time of the death of the insured. No policy nor the application therefor shall contain language or be in such form as to mislead the applicant or policyholder as to the type of insurance afforded nor as to his rights or benefits.

(b) It shall be unlawful for any stipulated premium company to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand Dollars (\$5,000.00).

(c) The approval of life policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

(d) It shall be unlawful for any stipulated premium company to issue any paid up or endowment type policy.

#### Health, Accident, Sickness and Hospitalization Policies

Sec. 2. (a) All health, accident, sickness and hospitalization policies shall be issued in accordance with the provisions of Article 3.70, of Chapter 3 of this Code.

(b) All health, accident, sickness and hospitalization policies issued, reinsured or assumed by a stipulated premium company shall contain therein a premium redetermination clause so as to permit a rate readjustment by action of the Board of Directors of the stipulated premium company.

(c) The approval of health, accident, sickness and hospitalization policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

#### Readjustment of Premiums

Sec. 3. Each stipulated premium company shall provide in all policies of insurance issued, reinsured, or assumed by it for an increase or readjustment, not inconsistent with the provisions of this Chapter,

of the rates of premium on any such insurance contracts, to be effectuated by resolution of its Board of Directors, whenever in their discretion such action becomes necessary. The Board of Directors shall have power in making any comprehensive readjustment of any class or classes of its policies, that any insured required to pay an increased premium may, at his option, in lieu thereof, or in combination therewith, consent to a reduction of the corresponding insurance benefits proportionate to the value of the increased premiums. Such requirement as to such policy provisions shall not apply to policy forms under which the premium for life insurance requires the payment of a premium for life insurance alone sufficient to maintain reserves at least equal to those computed on the basis of the 1958 Commissioners Standard Ordinary Table of Mortality with interest not to exceed three and one-half per cent (3½%) per annum and upon which the right to adjust rates has been relinquished by the stipulated premium company, provided that the stipulated premium company is possessed of free and unencumbered surplus in at least the amount of Fifty Thousand Dollars (\$50,000.00) at the date of issuance of each such policy.

#### Designation of Beneficiaries

Sec. 4. The designation of all beneficiaries under policies issued by stipulated premium companies shall comply with the provisions of Art. 3.49-1 and Art. 3.49-2 of Chapter 3 of this Code.

#### Reductions

Sec. 5. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

#### Certain Words Prohibited from Appearing on Policies

Sec. 6. No policy of insurance shall be approved for issuance of a stipulated premium company which shall contain thereon the words, "Approved by the State Board of Insurance," or words of a similar import or nature, and it shall be unlawful for any stipulated premium company to ever issue a policy containing such words or words of a similar import or nature.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1; Acts 1969, 61st Leg., p. 2309, ch. 780, §§ 1, 2, eff. June 14, 1969.]

#### Art. 22.14. Licensing of Agents

All agents of stipulated premium companies shall be licensed in accordance with the provisions of Art. 21.07 of Chapter 21 of this Code.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.15. Direct Reinsurance of Mutual Assessment Companies Regulated by Chapter Fourteen (14) of this Code**

**Authority**

Sec. 1. Any burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code, may directly reinsure itself into a stipulated premium company chartered under the provisions of this Chapter.

**Submission of Reinsurance Agreement to Board; Approval**

Sec. 2. When it shall be determined by a majority vote of the Board of Directors of the company or association regulated by the provisions of Chapter 14 to submit the proposed direct reinsurance agreement to the members of the company or association regulated by the provisions of Chapter 14 of this Code, said Board of Directors shall prepare in detail plans for making such reinsurance, and such reinsurance agreement shall be submitted to the State Board of Insurance. The State Board of Insurance shall determine whether such reinsurance agreement complies with the provisions of this Chapter, and if such reinsurance agreement be in compliance with the provisions of this Chapter, the State Board of Insurance shall approve the same for submission to the members of the company or association regulated by the provisions of Chapter 14 of this Code.

**Membership Meeting; Notice**

Sec. 3. After approval of the State Board of Insurance, the Board of Directors of the company or association regulated by the provisions of Chapter 14 of this Code shall, in accordance with the by-laws, call a meeting of its membership, and shall mail to each member a copy of the proposed direct reinsurance agreement and enclose therewith a copy of the notice of membership meeting to be held not earlier than fifteen (15) days after the date of mailing of the notice and reinsurance agreement.

**Ratification or Rejection; Vote; Procedure; Certification of Results**

Sec. 4. Such meeting of the membership shall be held for the purpose of ratification or rejection of the direct reinsurance agreement. Members may vote in person, by proxy to whomever the member may designate or by mail. All votes shall be cast by ballot. The Chairman of such meeting shall supervise and direct the method of procedure of said meeting and shall appoint an adequate number of inspectors to conduct the voting at said meeting; said inspectors shall have full power and authority to determine all questions concerning the verification of the ballots, the qualifications of the voters, the canvassing of the ballots and the ascertainment of the validity thereof. At the conclusion of said meeting, the inspectors shall certify under oath the result thereof to the State Board of Insurance and to the assuming stipulated premium company. A two-

thirds ( $\frac{2}{3}$ rds) majority vote cast by those participating in said meeting in person, by proxy or by ballot shall be sufficient and adequate for the purpose of ratification of such reinsurance agreement.

**Cessation of Business; Transfer of Assets; Assumption of Policy Liabilities; Surrender of Certificate of Authority**

Sec. 5. Provided such reinsurance agreement be approved by the members in accordance with the provisions of this Art. 22.15, the company or association regulated by the provisions of Chapter 14 of this Code shall cease to do business and all of its assets be transferred to the assuming stipulated premium company and thereupon become its sole and exclusive property. All policy liability will be assumed by the stipulated premium company in accordance with the provisions of said reinsurance agreement; all other liabilities shall be assumed by the stipulated premium company in accordance with the method and mode of payment thereof. The company or association regulated by the provisions of Chapter 14 of this Code shall thereafter forthwith surrender its certificate of authority and charter to the State Board of Insurance, which shall dissolve the same, and the company's or association's corporate existence shall cease.

**Approval of Agreement; Assumption Certificate; Calculation of Net Assets, Required Reserves and Deficiency Reserve; Apportionment of Net Assets**

Sec. 6. Such reinsurance agreement shall provide that the stipulated premium company will assume the policies of the company or association regulated by the provisions of Chapter 14 of this Act subject to the provisions of this Chapter. Immediately following approval by the membership of such reinsurance agreement, the stipulated premium company shall issue to each such member a certificate of assumption setting forth the terms of the assumption, and the reserve and interest table under which such policy is assumed. The agreement shall also provide for the calculation at the effective date of such reinsurance agreement of the following:

(a) The amount of the net assets, both mortuary and expense funds, of the company or association regulated under the provisions of Chapter 14 of this Code, which are to be transferred to the stipulated premium company after the payment of all liabilities; and

(b) The amount of the required reserves to be established under the reserve and interest table used in such reinsurance agreement; and

(c) The amount of the deficiency reserve, if any, resulting from the calculations of items (a) and (b) of this Section 6.

Such deficiency reserve shall be permitted in accordance with the provisions of Art. 22.11 of this Chapter, but must thereafter be reduced in compliance with said Art. 22.11, or said reinsurance agreement may provide for immediate rate adjustments, in accordance with accepted actuarial practices and standards, so as to eliminate said deficiency at the time of reinsurance or during the period allowed in

Art. 22.11 for curing of the said reserve deficiency. The sum total of the net assets of the company or association regulated by the provisions of Chapter 14 of this Code shall be apportioned for reserve calculation purposes among the members assessed as follows: The percentage of the whole of the net assets allotted to any individual member shall be calculated with the amount of the required reserve for such individual insured under such reinsurance agreement as the numerator and the total of all of the required reserve for all the members under such reinsurance agreement as the denominator.

Each such reinsurance agreement shall also provide that each policyholder who is dissatisfied with such reinsurance agreement and who does not desire to accept the assumption certificate offered by the stipulated premium company, shall be entitled to receive, if he shall so request in writing to the stipulated premium company within sixty (60) days following the mailing of the assumption certificate, the amount of the reserve under his policy reduced by the deficiency reserve, if any, as applicable to such policy.

#### Submission of Facts to Board

Sec. 7. Within ninety (90) days following such membership meeting, all facts in connection therewith, including the accounting thereof and the calculation of the required reserves, shall be submitted under oath to the State Board of Insurance.

#### Binding Effect of Contract

Sec. 8. Such reinsurance contract shall become binding upon both companies parties hereto at the effective date thereof immediately following the ratification by the membership of the company or association regulated under the provisions of Chapter 14 of this Code.

#### Readjustment of Premiums of Life Policies

Sec. 9. In the event the premiums charged on any life policy assumed by the stipulated premium company shall be less than the renewal net premium calculated in accordance with such reserve standard adopted by the reinsurance agreement, the rate shall be adjusted to an amount at least equal to the renewal net premium calculated in accordance with the reserve standards adopted by such reinsurance agreement based upon the insured's age at issue by the Chapter 14 Company, except that if the gross premium charged upon any family group policy so reinsured by the stipulated premium company is less than such renewal net premium for such policy or contract such rate may at the option of the stipulated premium company be not adjusted provided:

(a) The permissive deficiency reserve of the business of the Chapter 14 Company is less than 25% of the required reserve on such business to be reinsured, including the permissive deficiency premium reserve to be maintained as hereafter in this Section provided;

(b) The gross premium at time of reinsurance by the stipulated premium company of all family group policies is at least equal in the aggregate to 120% of the required net premiums upon such family group policies to be reinsured by the stipulated premium company; and

(c) There shall be maintained on each such policy contract a permissive deficiency premium reserve in addition to all other reserves required by law and for each such policy or contract the permissive deficiency premium reserve shall be the present value, according to such standard, of an annuity, the amount of which shall equal the difference between the premium charged and such net premium and the term of which in years shall equal the number of annual premiums for the remainder of the premium paying period. Such permissive deficiency premium reserve shall be included as a part of such permissive deficiency reserve and shall be reduced in like manner as in this Chapter provided for the permissive deficiency reserve.

#### "Net Assets" Defined

Sec. 10. The words "net assets" as used in this Chapter shall mean the funds of the company available for the payment of its obligations in this state, including uncollected premiums not more than three months past due after deduction from such funds all unpaid losses and claims and claims for losses and all other debts.

#### Advanced Approval for Adjustment of Life Insurance Rates

Sec. 11. Any Section or provision of this Act notwithstanding, no life insurance rates may be adjusted without the advanced approval of the State Board of Insurance, on notice to the policyholder. [Acts 1961, 57th Leg., p. 345, ch. 180, § 1; Acts 1965, 59th Leg., p. 1530, ch. 668, § 1.]

#### Art. 22.16. Applicability of Texas Business Corporation Act

Insofar as the same are not inconsistent with or contrary to any applicable provision of this Chapter or any other insurance law applicable to stipulated premium companies, or any amendments thereto, the provisions of the Texas Business Corporation Act<sup>1</sup> shall apply to and govern stipulated premium companies, provided, however, that wherever said Texas Business Corporation Act imposes some duty, authority, responsibility, power; or some act is vested in, required of, or is to be performed by the Secretary of State, such is hereby vested in, required of, or shall be performed by the State Board of Insurance.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

<sup>1</sup> Business Corporation Act, art. 1.01 et seq.

#### Art. 22.17. Limitation of Authority

No stipulated premium company may ever use in its advertising or representation of its policies the

words: "legal reserve company," "stock company," "old line legal reserve company," or any other words of like import whereby the public might be led to believe that policies of stipulated premium companies provide non-forfeiture values. All stipulated premium company policies and application forms must contain on the face thereof and immediately after the name of the company, the following language: "A Stipulated Premium Company." Each stipulated premium company policy shall provide on the front thereof that the premium is subject to readjustment, unless such policy is not subject to a premium readjustment under the provisions of Section 3 of Art. 22.13 of this Chapter.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

#### Art. 22.18. Other Laws to Govern

Sec. 1. The following Articles of this Code, to wit: Article 1.14, Article 1.15, Article 1.16, Article 1.19, Article 1.24, Article 3.13, Article 3.39, Article 3.40, Article 3.61, Article 3.62, Article 3.63, Article 3.67, Article 21.21, Article 21.25, Article 21.26, Article 21.28, Article 21.32, Article 21.39, Article 21.45, and Article 21.47, shall apply to and govern stipulated premium companies and each company shall comply with the provisions thereof.

Sec. 2. Stipulated premium companies shall be regulated by the Texas Securities Act, same being Acts 1957, 55th Legislature, pages 575 et seq., Chapter 269,<sup>1</sup> and shall pay premium taxes in like manner, as a company chartered and doing business under the provisions of Chapter 3 of this Code.

Sec. 3. Until such time as a stipulated premium company shall have and be possessed of capital of at least One Hundred Thousand Dollars (\$100,000.00) and free and unencumbered surplus in at least the amount of One Hundred Thousand Dollars (\$100,000.00), it shall be unlawful for any stipulated premium company to make a public offering, as defined in the Texas Securities Act, of any of its capital stock.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1; Acts 1967, 60th Leg., p. 816, ch. 343, § 1, eff. Aug. 28, 1967.]

<sup>1</sup> Civil Statutes, art. 581-1 et seq.

#### Art. 22.19. Total or Partial Direct Reinsurance Agreements

Sec. 1. Total or partial direct reinsurance agreements may be made and entered into between stipulated premium companies chartered under the provisions of this Chapter provided:

(a) The assuming company is authorized to transact the kinds of insurance provided by the policies assumed; and

(b) No total direct reinsurance agreement shall be made until the contract therefor has been submitted to and approved by the State Board of Insurance as protecting fully the interests of all the policyholders assumed.

Sec. 2. Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing business in this state upon compliance with the following terms and conditions:

(a) Such reinsurance agreement must be approved by a majority vote of the respective Boards of Directors of the respective companies parties thereto.

(b) In the event of the direct reinsurance of health, accident or sickness policies, the assuming company must assume the exact policy obligations of the stipulated premium policies; in the event the stipulated premium policy is non-cancellable or guaranteed renewable the assuming company may include in its assumption certificate a premium redetermination clause in lieu of the clause contained in the policy by reason of Art. 22.13 of this Chapter.

(c) In the event of the direct reinsurance of life policies or a combination of life and health, accident or sickness, such reinsurance agreement shall contain provisions in compliance with the following:

(1) In the event the assuming legal reserve company issues an assumption certificate providing whole life coverage for the life benefit, the policyholder shall not have the right to receive his individual reserve in cash by surrendering the assumption certificate;

(2) In the event the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is afforded, the following options shall be afforded to each policyholder affected thereby so that he may select any one of the following:

(a) The amount of the individual reserve, reduced by the deficiency reserve, if any, shall be paid in cash to the legal owner and holder of the policy upon its surrender and if the same be requested within sixty (60) days following mailing of notice of the options afforded to the policyholder;

(b) An assumption certificate of another stipulated premium company chartered and doing business pursuant to the provisions of this Chapter; or

(c) The legal reserve company's certificate of assumption predicated upon term coverage, but which term coverage shall be renewable for the life of the insured without evidence of insurability and the rate for which shall be based on the legal reserve table selected by the assuming company at the attained age of the insured at the date of the renewal increased by an appropriate expense factor. Each affected policyholder

shall have the right to exercise his option within sixty (60) days following the date the assumption certificate of the legal reserve company is mailed to the policyholder.

In the event the term coverage is afforded by the legal reserve company, the individual reserve, less the amount of the deficiency, if any, of each policyholder shall be used by the assuming company either:

(a) As a reserve credit to permit the legal reserve assumption certificate to be back dated as far as the reserve credit will permit; or

(b) As an annuity to reduce the required premium during the initial period of the term coverage.

(d) Each such reinsurance agreement shall be submitted in advance to and approved by the State Board of Insurance as to compliance with the provisions of this Section of this Art. 22.19 prior to the same becoming effective.

Sec. 3. In the event of a total direct reinsurance agreement under the provisions of Section 1 or Section 2 of this Art. 22.19, the reinsured stipulated premium company shall forthwith surrender its certificate of authority to the State Board of Insurance and proceed by action of its stockholders and Board of Directors to effect its dissolution.

Sec. 4. All partial direct reinsurance agreements shall be filed with the State Board of Insurance prior to the effective date of said agreement and the assuming company shall furnish an assumption certificate to the policyholder to be attached to his policy.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.20. Conversion to Chapter Three (3) Company**

At such time that a stipulated premium company shall be possessed with at least One Hundred Thousand Dollars (\$100,000.00) in capital and at least One Hundred Thousand Dollars (\$100,000.00) in free and unencumbered surplus and additionally shall have on hand sufficient reserves so as to reserve all of its policies under the provisions of Chapter 3 of this Code, the stockholders of the stipulated premium company may convert the stipulated premium company into a legal reserve company under the provisions of Chapter 3 of this Code. Within thirty (30) days following such conversion, the converted company shall furnish to each and every policyholder a certificate of assumption whereby the policy liability is assumed by the converted company and which said assumption certificate shall contain all of the provisions required by Chapter 3 of this Code. In consummating said conversion, each and every of the requirements of Chapter 3 of this Code shall be complied with and the State Board of Insurance shall approve such conversion only after determining that said converted company has complied with said Chapter 3 of this Code.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.21. Formation of Additional Associations Prohibited**

From and after the effective date of this Act, no local mutual aid association or local mutual burial association may be organized under and pursuant to the provisions of Art. 12.05 of the Insurance Code of Texas. The provisions of this Art. 22.21 shall not, however, be applicable to:

(1) any company or association which holds a temporary or other certificate of authority at the effective date of this Act; or

(2) any company or association for which an application to the Commissioner of Insurance or the State Board of Insurance for a temporary or other certificate of authority is pending at the effective date of this Act.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

**Art. 22.22. Insolvency; Conservatorship; Receiver**

If, upon an examination or at any other time, it appears to the Commissioner of Insurance that any stipulated premium company be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its policies, or if such company appears to have exceeded its powers or failed to comply with the law, then the Commissioner of Insurance shall notify the company of his determination and said company shall have thirty (30) days under the supervision of the Commissioner of Insurance within which to comply with the requirements of the Commissioner of Insurance, and in the event of its failure to comply within such time, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall immediately take charge of such company, and all of the property and effects thereof.

If the Commissioner of Insurance is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner of Insurance pending the election of new directors and officers by the shareholders in such manner as the Commissioner of Insurance may determine, the same shall be done, and the conservator may, with the approval of the Commissioner of Insurance, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this State. The conservator may transfer to the reinsurance company such assets or portions thereof as may be required to reinsure such policies. If the Commissioner of Insurance, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders and shareholders under the conservator as above provided, the Commissioner of Insurance shall proceed to reinsure the outstanding policies in some solvent company, authorized to transact business in this State, or the Commissioner of Insurance shall pro-

ceed through such conservator to liquidate such company, or the Commissioner of Insurance may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency. The Court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the company under usages and practices of equity; and may make disposition of the business and policies of the company as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such company, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such company be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner of Insurance to determine whether or not he will operate the company through a conservator, as provided above, or proceed to liquidate the company, or report it to the Attorney General, as herein provided.

When all the policies of a company are reinsured or liquidated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, reinsurance or consolidation of the policies of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the policies were merged, reinsured or consolidated, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the conservator's services shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the company to be allowed and paid as the Commissioner of Insurance may determine. [Acts 1965, 59th Leg., p. 1638, ch. 705, § 2, eff. Aug. 30, 1965.]

#### Art. 22.23. Issuance of Life Insurance Policies by Stipulated Premium Companies

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

(1) no individual life shall be insured for more than \$5,000.00,

(2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code, and

(3) each such life policy shall be issued only upon an endowment or limited pay basis.

[Acts 1971, 62nd Leg., p. 1311, ch. 346, § 1, eff. May 24, 1971.]

Sections 2 to 5 of Acts 1951, 52nd Leg., p. 868, ch. 491, enacting the Insurance Code, provided:

Sec. 2. **SUBSTANTIVE LAW PRESERVED.**—Nothing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act, or to affect or impair any act done, or right vested or accrued; or any proceeding, suit, or prosecution had or commenced in any cause, be it before the courts or the Board of Insurance Commissioners. But every such act done, or right vested or accrued, or proceeding, suit, or prosecution had or commenced shall remain in full force and effect to all intents as if the laws repealed by this Act had remained in force. No offense committed and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the effective date of this Act shall be discharged or affected by this Act. Prosecutions and suits for such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if prior laws repealed by this Act had not been repealed. It is hereby declared that the Board of Insurance Commissioners, its officers, the term of its officers together with their powers and duties, as they existed prior to the passage of this Act, are expressly continued, and all existing licenses and certificates and other records of such Board are expressly continued to the date on which they would automatically expire by their own terms unless revoked or suspended according to law.

Sec. 3. **SEVERABILITY.**—If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

Sec. 4. **REPEAL OF CONFLICTING LAWS.**—In connection with the general purpose of this Bill the following Statutes and Acts, together with all laws or parts of laws in conflict herewith, are hereby repealed:

Articles 4680, 4682, Subdivisions 1-20, 4683, 4684, 4685, 4687, 4689, 4691, 4692, 4693, 4694, 4695, 4696, 4697, 4698, 4699, 4700, 4701, 4702, 4703, 4707, 4709, 4710, 4711, 4712, 4713, 4714, 4715, 4716, 4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4727, 4728, 4731, 4732, 4734, 4735, 4737, 4738, 4739, 4741, 4743, 4745, 4746, 4747, 4749, 4750, 4751, 4753, 4754, 4755, 4756, 4757, 4759, 4760, 4761, 4762, 4763, 4764, 4765, 4767, 4768, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4779, 4780, 4801, 4803, 4804, 4805, 4806, 4807, 4810, 4812, 4814, 4815, 4818, 4819, 4823, 4829, 4830, 4832, 4834, 4835, 4836, 4837, 4838, 4839, 4840, 4841, 4842, 4843, 4844, 4845, 4846, 4847, 4848, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4878, 4879, 4880, 4881, 4882, 4883, 4884, 4885, 4886, 4887, 4888, 4889, 4890, 4892, 4893, 4894, 4895, 4896, 4897, 4898, 4899, 4900, 4901, 4903, 4904, 4905, 4908, 4909, 4910, 4911, 4913, 4914, 4915, 4916, 4917, 4918, 4919, 4920, 4921, 4922, 4923, 4924, 4927, 4928, 4931, 4969, 4970, 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4986, 4987, 4988, 4989, 4990, 4991, 4992, 4994, 4995, 4996, 4997, 4998, 4999, 5000, 5001, 5002, 5003, 5004, 5005, 5007, 5008, 5009, 5010, 5011, 5012, 5024, 5028, 5030, 5034, 5035, 5036, 5037, 5038, 5039, 5040, 5041, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5054, 5055, 5056, 5057, 5059, 5060, 5061, 5062, 5063, 5064, 5065, 5066, 5067 and 5068 of Title 78, Revised Civil Statutes of Texas, and all amendments to said Title and Articles, together with certain Acts from Titles 32, 61, 71 and 122, Revised Civil Statutes of Texas:

Acts of 1927, 40th Legislature, Page 329, Chapter 224, Sections 1-5 (Arts. 4679a, 4679b, 4679c, 4679d Sec. 6, 4679d Sec. 6A, 4679d Sec. 6B, 4681, 4682a);

Acts of 1927, 40th Legislature, Page 373, Chapter 253, as amended by Acts of 1937, 45th Legislature, Page 671, Chapter 335, and as amended, Acts of 1949, 51st Legislature, Page 847, Chapter 462, Sec. 1 (Art. 4682b, Sections 1, 1A, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11-a);

Acts of 1943, 48th Legislature, Page 607, Chapter 352 (Art. 4686, Secs. 1, 2);

Acts of 1947, 50th Legislature, Page 428, Chapter 235 (Art. 4688, Art. 4748);

Acts of 1931, 42nd Legislature, Page 252, Chapter 152, Sections 2, 3, 3-A, and as amended by Acts of 1939, 46th Legislature, Page 385, Chapter 2, Sections 1, 2 (Arts. 4690, 4690a, 4690b, 4690c);

Acts of 1945, 49th Legislature, Page 207, Chapter 160 (Art. 4698a, Sections 1-12);

Acts of 1949, 51st Legislature, Page 998, Chapter 539 (Art. 4698b, Sections 1-4);

Acts of 1927, 40th Legislature, Page 155, Chapter 104, Section 1, as amended by Acts of 1935, 44th Legislature, Page 492, Chapter 205 (Art. 4704, Sections 1-6, Art. 4708);

Acts of 1949, 51st Legislature, Page 1105, Chapter 564 (Art. 4705);

Acts of 1943, 48th Legislature, Page 61, Chapter 54 (Art. 4706);

Acts of 1949, 51st Legislature, Page 815, Chapter 439, Section 1 (Art. 4725);

Acts of 1931, 42nd Legislature, Page 96, Chapter 62, Section 1 (Art. 4726);

Acts of 1943, 48th Legislature, Page 304, Chapter 198, Section 1 (Art. 4729);

Acts of 1947, 50th Legislature, Page 352, Chapter 200, Section 1 (Art. 4730);

Acts of 1941, 47th Legislature, Page 1358, Chapter 620, Section 1 (Art. 4730a);

Acts of 1947, 50th Legislature, Page 330, Chapter 189, Section 1 (Art. 4732, Subdivisions 6, 7 and 8);

Acts of 1945, 49th Legislature, Page 152, Chapter 102, Section 1 (Art. 4732, Subdivision 12);

Acts of 1941, 47th Legislature, Page 519, Chapter 315, Section 1 (Art. 4733, Sections 1, 2 and 3);

Acts of 1931, 42nd Legislature, Page 135, Chapter 91, Section 1 (Art. 4736);

Acts of 1931, 42nd Legislature, Page 328, Chapter 195 (Art. 4736a, Sections 1 and 2);

Acts of 1943, 48th Legislature, Page 206, Chapter 125, Section 1 (Art. 4740);

Acts of 1941, 47th Legislature, Page 486, Chapter 304, Section 1 (Art. 4742);

Acts of 1945, 49th Legislature, Page 137, Chapter 93, Section 1 (Art. 4744);

Acts of 1947, 50th Legislature, Page 351, Chapter 199, Section 1 (Art. 4752);

Acts of 1935, 44th Legislature, Page 713, Chapter 307 (Art. 4758);

Acts of 1931, 42nd Legislature, Page 172, Chapter 101, Section 6 (Art. 4764a, Section 6);

Acts of 1947, 50th Legislature, Page 366, Chapter 208, Section 1 (Art. 4764a, Sections 1, 2, 3 and 4);

Acts of 1947, 50th Legislature, Page 428, Chapter 235, Section 3 (Art. 4764a, Section 5);

Acts of 1941, 47th Legislature, Page 111, Chapter 89 (Art. 4764b, Sections 1, 2, 3, 4, 6, 7, 7a, 8 and 9);

Acts of 1943, 48th Legislature, Page 603, Chapter 348 (Art. 4764b, Section 5);

Acts of 1947, 50th Legislature, Page 330, Chapter 189 (Art. 4764b, Section 2, Subsection e);

Acts of 1949, 51st Legislature, Page 132, Chapter 81 (Art. 4764c, Sections 1-16);

Acts of 1949, 51st Legislature, Page 813, Chapter 438, Section 1 (Art. 4766);

Acts of 1939, 46th Legislature, Page 384, Chapter 1 (Art. 3920);

Acts of 1947, 50th Legislature, Page 532, Chapter 312 (Art. 4800);

Acts of 1943, 48th Legislature, Page 580, Chapter 341, Sections 1, 3, 4, and 6 (Arts. 4802, 4809, 4811, 4816);

Acts of 1947, 50th Legislature, Page 498, Chapter 293, Sections 1, 2 (Arts. 4808, 4817);

Acts of 1929, 41st Legislature, Second Called Session, Page 28, Chapter 16, Sections 1, 2, 3 and 4 (Arts. 4825, 4826, 4827 and 4828);

Acts of 1931, 42nd Legislature, Page 71, Chapter 48, Sections 1 through 6 (Arts. 4820, 4821, 4822, 4824, 4831, 4831a);

Acts of 1933, 43rd Legislature, Page 853, Chapter 243, Sections 1, 2 (Art. 4838a);

Acts of 1936, 44th Legislature, Third Called Session, Page 2040, Chapter 495, Article IV, Section 5d (Art. 4858);

Acts of 1937, 45th Legislature, Page 16, Chapter 14, Section 1 (Art. 4858a);

Acts of 1929, 41st Legislature, First Called Session, Page 189, Chapter 75, Sections 1 through 10 (Art. 4859e);

Acts of 1933, 43rd Legislature, Page 856, Chapter 245, as amended, Acts of 1935, 44th Legislature, Page 651, Chapter 264, Section 1-2a, as amended, Acts of 1941, 47th Legislature, Page 860, Chapter 535, Section 1 (Art. 4859f, Sections 1 through 6, inclusive, 6a, 6b, 7 through 20, inclusive);

Acts of 1929, 41st Legislature, First Called Session, Page 90, Chapter 40, as amended, Acts of 1929, 41st Legislature, Second Called Session, Page 99, Chapter 60, Section 1; Acts of 1947, 50th Legislature, Page 430, Chapter 236, Sections 1, 1a (Arts. 4860a-1 through 4860a-6, inclusive; 4860a-6a; 4860a-7 through 4860a-18, inclusive; 4860a-18a; 4860a-19);

Acts of 1937, 45th Legislature, Page 184, Chapter 99, as amended, Acts of 1949, 51st Legislature, Page 826, Chapter 446, Section 1 (Art. 4860a-20, Sections 1 through 26, inclusive);

Acts of 1947, 50th Legislature, Page 739, Chapter 367, Section 1 (Art. 4860a-20, Sections 1a, 2a);

Acts of 1931, 42nd Legislature, Page 200, Chapter 118 (Art. 4871a, Sections 1-4, inclusive);

Acts of 1929, 41st Legislature, Page 563, Chapter 274, and as amended by Acts of 1931, 42nd Legislature, Page 334, Chapter 201; Acts of 1933, 43rd Legislature, Page 577, Chapter 190, and Acts of 1935, 44th Legislature, Page 550, Chapter 235 (Arts. 4875a-1 through 4875a-31, inclusive, Vernon's R.C.S.);

Acts of 1937, 45th Legislature, Page 29, Chapter 24, as amended by Acts of 1945, 49th Legislature, Page 214, Chapter 161, Section 3 (Art. 4902);

Acts of 1935, 44th Legislature, Page 192, Chapter 77, Section 1 (Art. 4891);

Acts of 1945, 49th Legislature, Page 214, Chapter 161, Sections 1, 2 and 4 (Art. 4905A, Art. 4905B and Art. 4905C);

Acts of 1931, 42nd Legislature, Page 290, Chapter 171, Section 1 (Art. 4907);

Acts of 1943, 48th Legislature, Page 614, Chapter 355, Section 1 (Art. 4912);

Acts of 1937, 45th Legislature, Page 30, Chapter 25, Section 1 (Art. 4918a);

Acts of 1941, 47th Legislature, Page 796, Chapter 494 (Art. 4918b);

Acts of 1937, 45th Legislature, Page 1255, Chapter 472, Sections 1 and 2 (Arts. 4925, 4926);

Acts of 1949, 51st Legislature, Page 835, Chapter 453, Sections 1 and 2 (Arts. 4929, 4929a);

Acts of 1927, 40th Legislature, Page 48, Chapter 33, Section 1 (Art. 4930);

Acts of 1949, 51st Legislature, Page 1360, Chapter 618, Section 1 (Art. 4932);

Acts of 1939, 46th Legislature, Page 394, Chapter 4, Section 1 (Art. 4993);

Acts of 1943, 48th Legislature, Page 436, Chapter 295, and as amended, Acts of 1949, 51st Legislature, Page 1067, Chapter 551 (Art. 5012a);

Acts of 1929, 41st Legislature, Page 77, Chapter 40, and as amended, Acts of 1931, 42nd Legislature, Page 449, Chapter 269 (Art. 1302a, Section 23);

Acts of 1933, 43rd Legislature, Page 750, Chapter 222 (Art. 1302a, Section 2), and Acts of 1945, 49th Legislature, Page 383, Chapter 245 (Art. 1302a, Section 24a);

Acts of 1929, 41st Legislature, First Called Session, Page 32, Chapter 11, Section 1 (Arts. 5013, 5014, 5015, 5016, 5017a, 5017b, 5017c, 5017e, 5018, 5018a, 5018b, 5019, 5019a, 5020, 5021, 5022, 5022a, 5022b, 5022c, 5022d, 5023, 5023a);

Acts of 1943, 48th Legislature, Page 605, Chapter 350, Section 1 (Art. 5017);

Acts of 1943, 48th Legislature, Page 606, Chapter 351, Section 1 (Art. 5017d);

Acts of 1939, 46th Legislature, Page 417, Chapter 8 (Arts. 5025, 5026, 5027, 5029, 5029a, 5031, 5032, 5033, 5033a);

Acts of 1939, 46th Legislature, Page 123, Chapter 1, as amended, Acts of 1943, 48th Legislature, Page 371, Chapter 249 (Art. 4590a, Sections 1, 1-a, 2 to 15, inclusive);

Acts of 1929, 41st Legislature, First Called Session, Page 5, Chapter 3, Section 1 (Art. 5053);

Acts of 1947, 50th Legislature, Page 956, Chapter 410 (Art. 5053a);

Acts of 1927, 40th Legislature, Page 269, Chapter 190 (Senate Bill 12), Section 1, as amended, Acts of 1939, 46th Legislature, Page 425, Chapter 10, Section 1 (Art. 5057a);

Acts of 1935, 44th Legislature, Page 227, Chapter 91, Section 1 (Art. 5058);

Acts of 1931, 42nd Legislature, Page 150, Chapter 96, as amended, Acts of 1935, 44th Legislature, Page 204, Chapter 83, Sections 1-3 (Art. 5062a);

Acts of 1941, 47th Legislature, Page 374, Chapter 212 (Art. 5062b, Sections 1-27);

Acts of 1927, 40th Legislature, Page 348, Chapter 234 (Art. 5068a, Sections 1-2);

Acts of 1933, 43rd Legislature, Page 356, Chapter 138, Sections 1-5, as amended, Acts of 1935, 44th Legislature, Page 679, Chapter 289, Sections 1, 2, 3, 4, 5, 7 and 7a, as amended, Acts of 1949, 51st Legislature, Page 384, Chapter 204 (Art. 5068b, Sections 1-5, 7 and 7a);

Acts of 1939, 46th Legislature, Page 389, Chapter 3 (Art. 5068c, Sections 1-6);

Acts of 1945, 49th Legislature, Page 51, Chapter 34, Section 1 (Art. 5068d);

Acts of 1949, 51st Legislature, Page 1355, Chapter 617, Sections 1-8 (Art. 5068e, Sections 1-8);

Acts of 1939, 46th Legislature, Page 401, Chapter 6, Sections 1 to 35, inclusive, as amended by Acts of 1941, 47th Legislature, Page 871, Chapter 542, Section 1 (Art. 5068-1 Vernon's);

Acts of 1941, 47th Legislature, Page 694, Chapter 433, Section 1 (Art. 5068-2 Vernon's);

Acts of 1943, 48th Legislature, Page 608, Chapter 353 (Art. 5068-3 Vernon's);

Acts of 1943, 48th Legislature, Page 696, Chapter 386, Section 1 (Art. 5068-4 Vernon's);

Acts of 1945, 49th Legislature, Page 229, Chapter 172, Section 1 (Art. 5068-2a Vernon's);

Acts of 1945, 49th Legislature, Page 191, Chapter 146 (Art. 5068-5 Vernon's);

Acts of 1947, 50th Legislature, Page 349, Chapter 197 (Art. 5068-6 Vernon's);

Acts of 1947, 50th Legislature, Page 734, Chapter 365 (Art. 5068-7, Sections 1 to 5, inclusive, Vernon's).

Sec. 5. EMERGENCY.—The fact that the present laws relating to insurance are in many respects inadequate, containing in many instances overlapping, ambiguous and inconsistent provisions and seriously interfering with the operation of the insurers as well as jeopardizing the insureds and protection of the public; and the further fact that jurisdictional uncertainties arising from the United States Supreme Court's decision holding that the business of insurance transacted across state lines is interstate commerce within the meaning of the Federal Constitution, making it practicable and necessary that such laws shall be made clear, concise, adequate and consistent for the protection of the insuring public as well as for the protection of those engaged in the insurance business, creates an emergency and an imperative public necessity, demanding that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and also the Constitutional Rule which provides that laws shall not become effective until the expiration of ninety (90) days after the adjournment of the session, be suspended, and such rules are hereby suspended, and this Act shall take effect and be in full force from and after the date of its passage and it is so enacted.

## TITLE 78. INSURANCE

### Article

4679 to 4768. Repealed.

4769. Tax on Insurance Organizations not Organized under Laws of Texas.

4769½. Additional Tax on Insurance Organizations not Organized under Laws of Texas.

4769a. Report of Premiums; Annual Tax; Report of Investments; Payment of Tax; Exclusiveness.

4770 to 5068-7. Repealed.

**Arts. 4679 to 4768. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4, eff. Sept. 7, 1951**

**Art. 4769. Tax on Insurance Organizations not Organized under Laws of Texas**

Every group of individuals, society, association or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Act) not organized under the laws of this State and transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31st, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first-year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one (1) occupation, shall pay an annual tax of 3.3% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year the amount that it had invested on the 31st of December, preceding, in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, and the amount that it had invested on said date in similar securities in the State in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments it shall include as a part thereof that percentage of its investments in bonds of the United States of America that its reserves on policies of insurance issued on the lives of persons residing or domiciled in Texas are of its total reserves on all policies outstanding, but in no event shall it include any amount of such bonds in excess of the amount thereof reported by said Company as Texas Securities in its Texas tax return covering the year 1946. If the report of such insurance organization as of December 31st, preceding, shows that such organization, had invested in such Texas securities

an amount which is more than seventy-five per cent (75%) and not more than eighty per cent (80%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 3.025% of such gross premium receipts; if the report shows that such insurance organization had invested in such Texas securities on such date an amount which is more than eighty per cent (80%) and not more than eighty-five per cent (85%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.75% of such gross premium receipts; if the report shows that such insurance organization had invested in such Texas securities on such date an amount which is more than eighty-five per cent (85%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.2% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 1.925% of such gross premium receipts; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred and Fifty Thousand Dollars (\$450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of  $\frac{55}{80}$  of 1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first-year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first-year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy, and provided further that the amount of examination and valuation fees paid in such taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. If any such insurance organization does more than one (1) kind of insurance business, then it shall pay

the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Upon receipt by it of the sworn statement above provided, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organizations which shall be paid to the State Treasurer on or before the fifteenth day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31st, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, not organized under the laws of this State, except, and only except unemployment compensation taxes levied under Senate Bill No. 5, passed at the Third Called Session of the Forty-fourth Legislature and amendments thereto;<sup>1</sup> and the fees provided for under Article 3920 of the Revised Civil Statutes of Texas, 1925, and amendments thereto; and in the case of companies operating under Article 4742 of the Revised Civil Statutes of Texas, 1925, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workman's compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city, or town, except State, county and municipal ad valorem taxes upon real or personal properties of such insurance organizations.

[Acts 1949, 51st Leg., p. 1362, ch. 619, § 1; Acts 1951, 52nd Leg., p. 695, ch. 402, § XXI(\$ 1).]

<sup>1</sup> Article 5221b-1 et seq.

**Art. 4769½. Additional Tax on Insurance Organizations not Organized under Laws of Texas**

In addition to all other taxes, there is hereby levied an additional tax for the years 1950 and 1951, upon every group of individuals, society, association, or corporation upon which a tax is levied by Chapter 619, Acts, Regular Session, Fifty-first Legislature.<sup>1</sup>

The tax shall be paid at the same time, in the same manner, and subject to all the same terms, conditions, obligations and penalties as is provided for the payment and collection of the tax levied in the aforesaid Chapter 619, Acts, Regular Session, Fifty-first Legislature.

The tax hereby levied for the year 1950, shall be ten per cent (10%) of three-fourths ( $\frac{3}{4}$ ) of the amount of tax levied and due for the calendar year 1950 under the aforesaid Chapter 619, Acts, Regular Session, Fifty-first Legislature. The tax hereby levied for 1951 shall be two-thirds ( $\frac{2}{3}$ ) of ten per cent (10%) of the amount of tax levied and due for the

calendar year 1951 under the aforesaid Chapter 619, Acts, Regular Session, Fifty-first Legislature.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XVII, § 3.]

<sup>1</sup> Arts. 4769, 4769a note.

*This article is repealed in so far as it levies a tax on premium receipts for the year 1951 by Acts 1951, 52nd Leg., p. 695, ch. 402, § XXI(\$ 2).*

**Art. 4769a. Report of Premiums; Annual Tax; Report of Investments; Payment of Tax; Exclusiveness**

Sec. 1. Every group of individuals, society, association, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Act) transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one occupation, shall pay an annual tax of three and five-tenths per cent (3.5%) of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year the amount that it had invested on the 31st of December, preceding, in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, and the amount that it had invested on said date in similar securities in the state in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments in such other state it shall include as a part thereof that percentage of its investment in bonds of the United States of America purchased between December 8, 1941, and the termination of the war in which the United States is now engaged that its reserves on policies of insurance issued on the lives of persons residing or domiciled in such state are of its total reserves on all policies outstanding. If the report of such insurance organization as of December 31, preceding, shows that such organization had invested in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, an amount which is not less than seventy-five per cent (75%) nor more than eighty per cent (80%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be three per cent (3%) of such gross premium receipts; if the report shows such insur-

ance organization had invested in such Texas securities on such date an amount which is in excess of eighty per cent (80%) and not more than eighty-five per cent (85%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and seventy-five one-hundredths per cent (2.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-five per cent (85%) and not more than eighty-eight per cent (88%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and twenty-five one-hundredths per cent (2.25%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-eight per cent (88%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be one and seventy-five one-hundredths per cent (1.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be ninety-five one hundredths of one per cent (.95 of 1%) of such gross premium receipts; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred Fifty Thousand Dollars (\$450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of five-eighths of one per cent ( $\frac{5}{8}$  of 1%) of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. If any such insurance organization does more than one kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Upon receipt by it of the sworn statement above provided, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the fifteenth day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, foreign or domestic, except, and only except unemployment compensation taxes levied under Senate Bill No. 5, passed at the Third Called Session of the Forty-fourth Legislature and amendments thereto; and the fees provided for under Article 3920 of the Revised Civil Statutes of Texas, 1925, and amendments thereto; and in the case of companies operating under Article 4742 of the Revised Civil Statutes of Texas, 1925, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workmen's compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city, or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

Sec. 2. This Act shall apply to the premiums collected during 1945 and subsequent years and shall not affect the obligation of any such insurance organization for the payment of any taxes that have accrued on premium receipts for insurance issued during 1944 or in prior years, but the obligation as now provided by law for the payment of such taxes shall continue in full force and effect. No such insurance organization shall receive a permit to do business in Texas until all premium taxes due by it to the State of Texas are paid.

Sec. 3. This Act shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 4765 of the Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. Article 7064a and Article 4769 of the Revised Civil Statutes of Texas, 1925, as amended, are repealed except for the continuing obligation of any such insurance organization for the payment of any taxes that have accrued under the provisions of either of said Articles. This Act shall be cumulative of all other laws but shall repeal Article 4758, Revised Civil Statutes of 1925, as amended; and shall repeal all other laws only in so far as they levy any tax on any of the organizations affected by this Act

or otherwise conflict with this Act, except as provided herein.

Sec. 5. If any section, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining portions of this Act, but the remainder of the Act shall be given effect as if such invalid, unconstitutional, or inoperative portion had not been included.

[Acts 1945, 49th Leg., p. 442, ch. 279.]

#### REPEAL

*This article is repealed by Acts 1949, 51st Leg., p. 1362, ch. 619, § 4, and Acts 1949, 51st Leg., p. 1365, ch. 620, § 4 "in so far as it applies to any group of individuals, society, association, or other corporation organized under the laws of*

*this State except for the continuing obligation of any such insurance organization for the payment of any and all taxes that have accrued under the provisions and said House Bill No. 23, known as Chapter 279, Page 442, Acts of the Regular Session of the Forty-ninth Legislature. This Act shall be cumulative of all other laws and shall repeal any other law only in so far as said law shall levy any tax on any of the insurance organizations affected by this Act, or otherwise conflict with this Act, except as provided for herein."*

**Arts. 4770 to 5068-7. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4, eff. Sept. 7, 1951**

# DISPOSITION TABLE

Showing where provisions of former Insurance Articles of the Civil Statutes have been incorporated in the Insurance Code of 1951.

Civ.St. Article	Insurance Code Article		Civ.St. Article	Insurance Code Article
1302a, § 1	9.01		4590a, § 13	20.20
1302a, § 2	9.02		4590a, § 14	20.21
1302a, § 3	9.03		4590a, § 15	20.06
1302a, § 3a	9.04		4590a, §§ 16-19	Omitted
1302a, § 4	9.05		4679	Repealed
1302a, § 5	9.06		-----	1.01
1302a, § 6	9.07		4679a	1.02(a)
1302a, § 7	9.08		4679b	1.03
1302a, § 8	9.09		4679c	1.04
1302a, § 9	9.10		4679d, § 6	1.05
1302a, § 10	9.11		4679d, § 6A	1.06
1302a, § 11	9.12		4679d, § 6B	1.07
1302a, § 12	9.13		4680	1.08
1302a, § 13	9.14		4681	1.09
1302a, § 14	9.15		4682(1)	1.10(1)
1302a, § 15	9.16		4682(2)	1.10(2)
1302a, § 16	9.17		4682(3)	3.28
1302a, § 17	9.18		4682(4)	3.32
1302a, § 18	9.19		4682(5)	3.30
1302a, § 19	9.20		4682(6)	3.31
1302a, § 20	9.21		4682(7)	6.01 (in part)
1302a, § 21	9.22		-----	1.10(3)
1302a, § 22	9.23		4682(8)	6.02
1302a, § 23	9.24		4682(9)	1.10(5)
1302a, § 24	9.25		4682(10)	1.10(6)
1302a, § 24a	9.26		4682(11)	1.10(7)
-----	9.27		4682(12)	1.10(8)
3920	4.07		4682(13)	1.10(9)
4590a, § 1	20.01		4682(14)	1.10(10)
4590a, § 1a (a-e)	20.02		4682(15)	1.10(11)
4590a, § 1a (f)	20.03		4682(16)	1.10(12)
4590a, § 1a (g)	20.04		4682(17)	1.10(13)
4590a, § 1a (h)	20.05		4682(18)	1.10(14)
4590a, § 1a (i)	20.07		4682(19)	1.10(15)
4590a, § 1a (j)	20.08		4682(20)	1.10(16)
4590a, § 2	20.09		4682a	1.02(b)
4590a, § 3	20.10		4682b, § 1	5.01
4590a, § 4	20.11		4682b, § 1A	5.02
4590a, § 5	20.12		4682b, § 2	5.03
4590a, § 6	20.13		4682b, § 3	5.04
4590a, § 7	20.14		4682b, § 4	5.05
4590a, § 8	20.15		4682b, § 5	5.06
4590a, § 9	20.16		4682b, § 6	5.07
4590a, § 10	20.17		4682b, § 7	5.08
4590a, § 11	20.18		4682b, § 8	5.09
4590a, § 12	20.19		4682b, § 9	5.10

Civ.St. Article	Insurance Code Article
4682b, § 10	5.11
4682b, § 11	Omitted
4682b, § 11a	5.12
4682c	Expired
4683	1.11
4684	1.12
4685	1.13
4686	1.14
4687	Omitted
4688	3.28
4689	1.10(4)
4690	1.15
4690a	1.16
4690b	1.17
4690c	1.18
4691	1.19
4692	1.20
4693	1.21
4694	1.22
4695	1.23
4696	1.24
4697	1.25
4698	2.19
4698a, § 1	5.13
4698a, § 2	5.14
4698a, § 3	5.15
4698a, § 4	5.16
4698a, § 5	5.17
4698a, § 6	5.18
4698a, § 7	5.19
4698a, § 8	5.20
4698a, § 9	5.21
4698a, § 10	5.22
4698a, § 11	5.23
4698a, § 12	5.24
4698a, § 13	Omitted
4698a, § 14	Omitted
4698b, § 1	5.72
4698b, § 2	5.73
4698b, § 3	5.74
4698b, § 4	5.75
4699	2.01
4700	2.02
4701	2.04
4702	2.05
4703	2.06
4704	2.07
4705(1-3)	2.08(1-3)
_____	2.08(4)
4706	2.10
_____	2.10(h)
4707	2.09
4708	2.11
4709	2.12
4710	2.13
4711	2.14

Civ.St. Article	Insurance Code Article
4712	2.15
4713	2.16
4714	2.17
4715	2.18
4716	3.01
4717	3.02
4718	3.04
4719	3.05
4720	3.06
4721	3.07
4722	3.08
4723	3.09
4724	3.63
4725	3.39
_____	3.39(3)
4726	3.40
4727	3.67
4728	3.10
4729	3.11
4730	3.12
4730a	21.08
4731	3.13
4732	3.44
4733	3.45
4734	3.47
4735	3.64
4736	3.62
4736a	3.48
4737	3.61
4738	3.54
4739	3.15
4740	3.16
4741	3.18
4742	3.19 (Repealed)
4743	3.17
4744	3.29
4745	3.68
4746	Omitted
4747	3.14
4748	3.60
4749	3.42
4750	3.43 (Repealed)
4751	3.57
4752	3.03 (Repealed)
4753	21.31
4754	4.01
4755	3.20
4756	3.21
4757	3.22
4759	3.23
4760	3.24
4761	3.26
4762	3.41
4763	3.65
4764	3.66
4764a	3.50

## DISPOSITION TABLE

Civ.St. Article	Insurance Code Article	Civ.St. Article	Insurance Code Article
4764b, §§ 1-8	3.52	4829	10.10
4764b, § 9	Omitted	4830	10.11
4764c, §§ 1-14	3.53	4831	10.12
4764c, §§ 15, 16	Omitted	4831a	10.13
4765	3.33	4832	10.14
4766	3.34	4833	Repealed
4767	3.35	4834	10.15
4768	3.36	4835	10.16
4769 (Title only)	4.03	4836	10.17
—	4.03, § 1	4837	10.18
4769½	Omitted	4838	10.19
4769a, §§ 1-5	Omitted	4838a	Omitted
4770	4.05	4839	10.20
4771	4.06	4840	10.21
4772	3.25	4841	10.22
4773	3.59	4842	10.23
4774	3.58	4843	10.24
4775	3.55	4844	10.25
4776	3.56	4845	10.26
4777	3.15	4846	10.27
4778	3.37	4847	10.28
4779	3.38	4848	10.29
4780	3.27	4849	10.30
4781	Repealed	4850	10.31
4782-4782c	Repealed	4851	10.32
4783	Repealed	4852	10.33
4784-4799	Repealed	4853	10.34
4800	11.01	4854	10.35
4801	11.02	4855	10.36
4802	11.03	4856	10.37
4803	11.04	4857	10.38
4804	11.05	4858	Omitted
4805	11.06	4858a	10.39
4806	11.07	4859-4859d	Repealed
4807	11.08	4859e	10.40
4808	11.09	4859f, § 1	13.01
4809	11.10	4859f, § 2	Omitted
4810	11.11	4859f, § 3	14.06*
4811	11.12	4859f, § 4	14.10
4812	11.13	4859f, § 5	14.15
4813	Repealed	4859f, § 6	14.16, 14.17
4814	11.14	4859f, § 6a	Omitted
4815	11.15	4859f, § 6b	Omitted
4816	11.16	4859f, § 7(a)	14.08
4817	11.17	4859f, § 7(b)	14.09
4818	11.18	4859f, § 8	13.03
4819	11.19	4859f, § 9	14.24, 14.28
4820	10.01	4859f, § 10	14.04
4821	10.02	4859f, § 11	13.04
4822	10.03	4859f, § 12	13.05
4823	10.04	4859f, § 13	14.33
4824	10.05	4859f, § 14	13.06
4825	10.06	4859f, § 15	13.07
4826	10.07	4859f, § 16	14.34
4827	10.08	4859f, § 17	14.35
4828	10.09	4859f, § 18	13.08

\* First two paragraphs of Art. 4859f, § 3, omitted.

Civ.St. Article	Insurance Code Article
4859f, § 19	13.09
4859f, § 20	Omitted
4860a—1	15.01
4860a—2	15.02
4860a—3	15.03
4860a—4	15.04
4860a—5	15.05
4860a—6	15.06
4860a—6a	15.07
4860a—7	15.08
4860a—8	15.09
4860a—9	15.10
4860a—10	15.11
4860a—11	15.12
4860a—12	15.13
4860a—13	15.14
4860a—14	15.15
4860a—15	15.16
4860a—16	15.17
4860a—17	15.18
4860a—18	15.19
4860a—18a	Omitted
4860a—19	15.20
4860a—20, § 1	16.01, 17.01
4860a—20, § 1a (1947)	16.02, 17.25, § 1
4860a—20, § 2	16.03, 17.02
4860a—20, § 2a	17.25, § 2
4860a—20, § 2a (a)	17.25, § 3
4860a—20, § 2a (b)	17.25, § 4
4860a—20, § 2a (c)	17.25, § 5
4860a—20, § 2a (d)	17.25, § 6
4860a—20, § 2a (e)	17.25, § 7
4860a—20, § 2a (f)	17.25, § 8
4860a—20, § 2a (g)	17.25, § 9
4860a—20, § 2a (h)	17.25, § 10
4860a—20, § 2a (i)	17.25, § 11
4860a—20, § 2a (j)	17.25, § 12
4860a—20, § 2a (k)	17.25, § 13
4860a—20, § 2a (l)	17.25, § 14
4860a—20, § 2a (m)	17.25, § 15
4860a—20, § 2a (n)	17.25, § 16
4860a—20, § 2a (o)	17.25, § 17
4860a—20, § 2a (p)	17.25, § 18
4860a—20, § 2a (q)	17.25, § 19
4860a—20, § 2a (r)	17.25, § 20
4860a—20, § 2a (s)	Omitted
4860a—20, § 2a (t)	17.25, § 21
4860a—20, § 3	16.05, 17.03
4860a—20, § 4	16.04, 17.04
4860a—20, § 5	16.06, 17.05
4860a—20, § 6	16.11, 17.06
4860a—20, § 7	16.14, 17.08
4860a—20, § 8	16.15, 17.09
4860a—20, § 9	16.17, 17.10
4860a—20, § 10	16.24, 17.11

Civ.St. Article	Insurance Code Article
4860a—20, § 11	16.16, 17.12
4860a—20, § 12	16.18, 17.13
4860a—20, § 13	16.09, 17.14
4860a—20, § 14	16.08, 17.15
4860a—20, § 15	16.07, 17.16
4860a—20, § 16	16.19, 17.17
4860a—20, § 17	Omitted
4860a—20, § 18	16.23, 17.18
4860a—20, § 19	16.25, 17.19
4860a—20, § 20	16.21, 17.20
—	17.21
4860a—20, § 21	16.10, 17.07
4860a—20, § 22	Omitted
4860a—20, § 23	16.28, 17.22
4860a—20, § 24	16.12, 17.23
4860a—20, § 25	16.13, 17.24
4860a—20, § 26	Omitted
—	16.26
—	16.27
—	16.28
4861—4871	Repealed
4871a	21.27
4872—4875	Repealed
4875a—1	12.01
4875a—2	12.02
4875a—3	12.03
4875a—4	12.04
4875a—5	12.05
4875a—5(5) in part	14.08
4875a—6	12.07
4875a—7	14.09
4875a—8	14.03
4875a—9	12.08
4875a—10	14.11
4875a—11	14.27
4875a—12	12.09
4875a—13	14.31
4875a—14	12.10
4875a—15	14.22
4875a—16	14.28
4875a—17	14.24
4875a—18	14.26
4875a—19	14.15
4875a—20	14.15
4875a—21	14.16
4875a—22	12.11
4875a—23	Omitted
4875a—24	12.12
4875a—25	14.34
4875a—26	12.13
4875a—27	12.14
4875a—28	12.15
4875a—29	12.16
4875a—30	12.17
4875a—31	12.18
4876	Repealed

## DISPOSITION TABLE

Civ.St. Article	Insurance Code Article	Civ.St. Article	Insurance Code Article
4877	Repealed	4926	6.10
4878	5.25	4927	6.11
4879	5.26	4928	6.12
4880	5.27	4929	6.13
4881	5.28	4929a	6.13
4882	5.29	4930	6.14
4883	5.30	4931	6.15
4884	5.31	4932	6.16
4885	5.32	4933-4940	Repealed
4886	5.33	4942-4968	Repealed
4887	5.34	4969	7.01
4888	5.35	4970	7.02 (Repealed)
4889	5.36	4971	7.03 (Repealed)
4890	5.37	4972	7.04 (Repealed)
4891	5.38	4973	7.05 (Repealed)
4892	5.39	4974	7.06 (Repealed)
4893	5.40	4975	7.07 (Repealed)
4894	5.41	4976	7.08 (Repealed)
4895	5.42	4977	7.09 (Repealed)
4896	5.43	4978	7.10 (Repealed)
4897	5.44	4979	7.11 (Repealed)
4898	5.45	4980	7.12 (Repealed)
4899	5.46	4981	7.13 (Repealed)
4900	5.47	4982	7.14 (Repealed)
4901	5.48	4983	7.15 (Repealed)
4902	5.49	4984	7.16 (Repealed)
4903	5.50	4985	7.17 (Repealed)
4904	5.51	4986	7.18 (Repealed)
4905	5.67	4987	21.39
4905A	5.52	4988	21.40
4905B	5.53	4989	8.01
4905C	5.54	4990	8.02
4906	Repealed	4991	8.03
4907	5.55	4992	8.04
4908	5.56	4993	8.05
4909	5.58	4994	8.06
4910	5.59	4995	8.07
4911	5.60	4996	8.08
4912	5.65	4997	8.09
4913	5.57	4998	8.10
4914	5.61	4999	8.11
4915	5.62	5000	8.12
4916	5.66	5001	8.13
4917	5.63	5002	8.14
4918	5.64	5003	8.15
4918a	5.68	5004	8.16
4918b, § 1	5.69	5005	8.17
4918b, § 2	5.70	5006	Repealed Omitted
4918b, § 3	5.71	5007	8.18
4919	6.03	5008	8.19
4920	6.04	5009	8.20
4921	6.05	5010	8.21
4922	6.06	5011	8.22
4923	6.07	5012	8.23
4924	6.08	5012a, § 1	8.24
4925	6.09		

Civ.St. Article	Insurance Code Article	Civ.St. Article	Insurance Code Article
5012a, §§ 2, 3	Omitted	5051	3.46
5013	18.01	5052	21.20
5014	18.02	5053	21.21
5015	18.03	5053a	3.51
5016	18.04	5054	21.42
5017	18.05	5055	21.01
5017a	18.06	5056	21.02
5017b	18.07	5057	21.03
5017c	18.08	5057a	4.01
5017d	18.09	5058	21.09
5017e	18.10	5059	21.10
5018	18.11	5060	21.11
5018a	18.12	5061	21.12
5018b	18.13	5062	21.13
5019	18.14	5062a	Omitted
5019a	18.15	5062b, §§ 1-26	21.14
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# TEXAS PROBATE CODE

Acts 1955, 54th Leg., p. 88, ch. 55

Approved April 4, 1955, effective Jan. 1, 1956

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## CHAPTER I. GENERAL PROVISIONS

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### § 1. Short Title

This Act shall be known, and may be cited, as the "Texas Probate Code."

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 2. Effective Date and Application

(a) **Effective Date.** This Code shall take effect and be in force on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceedings in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) **Rights Not Affected.** No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

(c) **Subdivisions Have No Legal Effect.** The division of this Code into Chapters, Parts, Sections, Subsections, and Paragraphs is solely for convenience and shall have no legal effect.

(d) **Severability.** If any provision of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable, and the Legislature hereby states that it would have enacted such portions of the Code which can lawfully be given effect regardless of the possible invalidity of other provisions of the Code.

(e) **Nature of Proceeding.** The administration of the estate of a decedent or ward, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

(a) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors, administrators, and guardians.

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include an unrecognized, illegitimate child of the father.

(c) "Claims" include liabilities of a decedent which survive, including taxes, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, estate and inheritance taxes, liabilities against the estate of a minor or incompetent, and debts due such estates.

(d) "Corporate fiduciary" means a trust company or bank having trust powers, existing or doing business under the laws of this state or of the United States, which is authorized by law to act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, or, although without general depository powers, depository for any moneys paid into court, or to become sole guarantor or surety in or upon any bond required to be given under the laws of this state.

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction and courts created by statute and authorized to exercise original probate jurisdiction.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction or a court created by statute and authorized to exercise probate jurisdiction.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction and a court created by statute and authorized to exercise original probate jurisdiction.

(h) "Devise," when used as a noun, includes a testamentary disposition of real or personal

property, or of both. When used as a verb, "devise" means to dispose of real or personal property, or of both, by will.

(i) "Devisee" includes legatee.

(j) "Distributee" denotes a person entitled to the estate of a decedent under a lawful will, or under the statutes of descent and distribution.

(k) "Docket" means the probate docket.

(l) "Estate" denotes the real and personal property of a decedent or ward, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent's death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

(m) "Exempt property" refers to that property of a decedent's estate which is exempt from execution or forced sale by the Constitution or laws of this State, and to the allowance in lieu thereof.

(n) "Habitual drunkard" and "common drunkard" are synonymous and denote one who, by reason of the habitual use of intoxicating liquor or of drugs, is incapable of taking care of himself or managing his property and financial affairs.

(o) "Heirs" denote those persons, including the surviving spouse, who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate.

(p) "Incompetents" or "Incompetent persons" are persons non compos mentis, idiots, lunatics, insane persons, common or habitual drunkards, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(q) "Independent executor" means the executor appointed in a will which provides in substance that no action shall be had in the county court in the settlement of the estate other than the probating and recording of the will, and the return of an inventory, appraisement, and list of claims of the estate, or which contains other provisions indicating an intention to appoint such an executor.

(r) "Interested persons" or "persons interested" means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of a minor or incompetent ward.

(s) "Legacy" includes any gift or devise by will, whether of personalty or realty. "Legatee" includes any person entitled to a legacy under a will.

(t) "Minors" are all persons under twenty-one years of age who have never been married, except persons under that age whose disabilities of minority have been removed generally, except as to the right to vote, in accordance with the laws of this State.

(u) "Minutes" means the probate minutes.

(v) "Mortgage" or "Lien" includes deed of trust, vendor's lien, chattel mortgage, mechanic's, materialman's or laborer's lien, judgment, attachment or garnishment lien, pledge by hypothecation, and Federal or State tax liens.

(w) "Net estate" means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable claims against the estate.

(x) "Person" includes natural persons and corporations.

(y) "Persons of unsound mind" are persons non compos mentis, idiots, lunatics, insane persons, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(z) "Personal property" includes interests in goods, money, choses in action, evidence of debts, and chattels real.

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, temporary administrator, guardian, and temporary guardian, together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

(bb) "Probate matter," "Probate proceedings," "Proceeding in probate," and "Proceedings for probate" are synonymous and include a matter or proceeding relating to guardianship, as well as a matter or proceeding relating to the estate of a decedent, and proceedings regarding incompetents.

(cc) "Property" includes both real and personal property.

(dd) "Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(ee) "Surety" includes both personal and corporate sureties.

(ff) "Will" includes codicil; it also includes a testamentary instrument which merely appoints an executor or guardian, and a testamentary instrument which merely revokes another will.

(gg) The singular number includes the plural; the plural number includes the singular.

(hh) The masculine gender includes the feminine and neuter.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, p. 53, ch. 31, § 2(a), eff. Aug. 22, 1957; Acts 1961, 57th Leg., p. 44, ch. 30, § 2, eff. Aug. 28, 1961; Acts 1969,

61st Leg., p. 1703, ch. 556, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1922, ch. 641, § 1, eff. June 12, 1969.]

#### § 4. Jurisdiction of County Court With Respect to Probate Proceedings

The county court shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors and incompetents, grant letters testamentary and of administration and guardianship, settle accounts of personal representatives, and transact all business appertaining to estates subject to administration or guardianship, including the settlement, partition, and distribution of such estates. It may also appoint guardians for other persons where it is necessary that a guardian be appointed to receive funds from any governmental source or agency.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 5. Jurisdiction of District Court With Respect to Probate Proceedings

The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

In those counties in which there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court. In those counties it shall probate wills, appoint guardians, of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law. All applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in the county court, except that in contested probate proceedings, the judge of the county court on his own motion, or the parties by agreement may transfer such proceeding to the district court, which may then hear such proceeding as if originally filed in such court. In such counties all final orders in such matters shall be appealable to the courts of (civil) appeals.

In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdictions of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in such courts, and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts. In such counties all final orders in such matters shall be appealable to the courts of (civil)

appeals. All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate, including but not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate and of all actions for trial of the right of property incident to an estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1973, 63rd Leg., p. 1684, ch. 610, § 1.]

Section 2 of the 1973 Act amended Section 21; § 3 thereof provided: "Sec. 3. This Act takes effect only if a constitutional amendment [Acts 1973, 63rd Leg., p. 2471, S.J.R. No. 26, amending Const. art. 5, § 81 deleting the constitutional requirement that district courts shall have only appellate jurisdiction and general control over probate matters is submitted by the 63rd Legislature and is adopted by the qualified electors of this state." It was so adopted at election held on November 6, 1973.

### § 6. Venue for Probate of Wills and Administration of Estates of Decedents

Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(a) In the county where the deceased resided, if he had a domicile or fixed place of residence in this State.

(b) If the deceased had no domicile or fixed place of residence in this State but died in this State, then either in the county where his principal property was at the time of his death, or in the county where he died.

(c) If he had no domicile or fixed place of residence in this State, and died outside the limits of this State, then in any county in this State where his nearest of kin reside.

(d) But if he had no kindred in this State, then in the county where his principal estate was situated at the time of his death.

(e) In the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency; provided, that unless the mother or father or spouse or adult child of the deceased is applicant, citation shall be served personally on the living parents and spouses and adult children, if any, of the deceased person, or upon those who are alive and whose addresses are known to the applicant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 7. Venue for Appointment of Guardians

A proceeding for the appointment of a guardian shall be begun:

(a) For the person and estate, or either, of a minor, in the county where his parents reside; provided such proceeding shall be begun:

(1) When the parents do not reside in the same county, then in the county where the parent having custody of the minor at the time resides.

(2) If only one parent is living, in the county where the surviving parent resides, if such parent has custody of the minor.

(3) If either or both parents are living, but no parent has custody of the minor, then in the county where such minor is found, or in the county where the principal estate of the minor is situated.

(4) If both parents are dead, but the minor was in the custody of a deceased parent, then in the county where the last surviving parent having custody resided.

(5) If both parents are dead, but, at the time of their death the minor was in the custody of a person other than a parent, then in the county where such minor is found, or in the county where his principal estate is situated.

(6) If both parents of a minor child or children die in a common disaster and there is no evidence that such parents died other than simultaneously, then in the county:

(A) Where both deceased parents resided at the time of their simultaneous deaths; or

(B) Where the bulk of such minor child or children's estate is situated; or

(C) Where such minor child or children are found.

(b) For the person and estate, or either, of an incompetent, in the county where such person resides, or where his principal estate is situated.

(c) Where a guardian has been appointed by will, in the county where the will has been admitted to probate, or in the county of the appointee's residence if he resides in Texas, or in the county in which the ward's principal estate is situated.

(d) For the estate of a person requiring the appointment of a guardian to receive funds from any governmental source or agency, in the county where such person resides.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1989, ch. 678, § 1, eff. June 12, 1969.]

### § 8. Concurrent Venue and Transfer of Proceedings

(a) **Concurrent Venue.** When two or more courts have concurrent venue of an estate, the court in which application for probate proceedings thereon is first filed shall have and retain jurisdiction of the estate to the exclusion of the other court or courts. The proceedings shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless the decree admitting the will to probate or granting administration in the prior proceeding shall be recorded in the office of the county clerk of the county in which such property is located.

(b) **Proceedings in More Than One County.** If proceedings for probate are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and proceedings shall thereupon be had in the proper county in the same manner as if the proceedings had originally been instituted therein.

(c) **Transfer of Proceeding.**

(1) **Transfer for Want of Venue.** If it appears to the court at any time before the final decree that the proceeding was commenced in a court which did not have priority of venue over such proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the minutes theretofore made; and administration of the estate in such county shall be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

(2) **Transfer for Convenience of the Estate.** If it appears to the court at any time before the final decree that it would be for the best interest of the estate, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State.

(d) **Validation of Prior Proceedings.** When a proceeding is transferred to another county under any provision of this Section of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

(e) **Jurisdiction to Determine Venue.** Any court in which there has been filed an application for proceedings in probate shall have full jurisdiction to determine the venue of such proceeding, and of any proceeding relating thereto, and its determination shall not be subject to collateral attack.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 9. **Defects in Pleading**

No defect of form or substance in any pleading in probate shall be held by any court to invalidate such pleading, or any order based upon such pleading, unless the defect has been timely objected to and called to the attention of the court in which such proceedings were or are pending.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 10. **Persons Entitled to Contest Proceedings**

Any person interested in an estate may, at any time before any issue in any proceeding is decided upon by the court, file opposition thereto in writing and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition, as in other suits.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 11. **Applications and Other Papers to be Filed With Clerk**

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

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 12. **Costs and Security Therefor**

(a) **Applicability of Laws Regulating Costs.** The provisions of law regulating costs in ordinary civil cases shall apply to all matters in probate when not expressly provided for in this Code.

(b) **Security for Costs Required, When.** When any person other than the personal representative of an estate files an application, complaint, or opposition in relation to the estate, he may be required by the clerk to give security for the probable cost of such proceeding before filing the same; or any one interested in the estate, or any officer of the court, may, at any time before the trial of such application, complaint, or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the probable costs of such proceeding. The rules governing civil suits in the county court respecting this subject shall control in such cases.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 13. **Judge's Probate Docket**

The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

(a) The name of each person upon whose person or estate proceedings are had or sought to be had.

(b) The name of the executor or administrator or guardian of such estate or person, or of the applicant for letters.

(c) The date of the filing of the original application for probate proceedings.

(d) A minute of each order, judgment, decree, and proceeding had in each estate, with the date thereof.

(e) A number for each estate upon the docket in the order in which proceedings are commenced, and each paper filed in an estate shall be given the corresponding docket number of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 14. Claim Docket**

The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator or guardian; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 15. Probate Minutes and Papers to be Recorded Therein**

The county clerk shall keep a record book styled "Probate Minutes," and shall enter therein in full all orders, judgments, decrees, and proceedings of the court, together with the following:

- (a) All applications for the probate of wills and for the granting of administration or guardianship.
- (b) All citations and notices, whether published or posted, with the returns thereon.
- (c) All wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded.
- (d) All bonds and official oaths.
- (e) All inventories, appraisements, and lists of claims.
- (f) All exhibits and accounts.
- (g) All reports of hiring, renting, or sale.
- (h) All applications for sale or partition of real estate and reports of sale and of commissioners of partition.
- (i) All applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money.
- (j) All reports of lending or investing money.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 16. Probate Fee Book**

The county clerk shall keep a record book styled "Probate Fee Book," and shall enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom the costs or fees are due, the date of the accrual of the same, the estate or party liable

therefor, and the date on which any such costs or fees are paid.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 17. Index**

The county clerk shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his custody.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 18. Use of Records as Evidence**

The record books described in preceding Sections of this Code, or certified copies thereof, shall be evidence in any court of this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 19. Call of the Dockets**

The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents, minors and incompetents in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 20. Clerk May Set Hearings**

Whenever, on account of the county judge's absence from the county seat, or his being on vacation, disqualified, ill, or deceased, such judge is unable to designate the time and place for hearing a probate matter pending in his court, authority is hereby vested in the county clerk of the county in which such matter is pending to designate such time and place, entering such setting on the judge's docket and certifying thereupon why such judge is not acting by himself. If, after service of such notices and citations as required by law with reference to such time and place of hearing has been perfected, no qualified judge is present for the hearing, the same shall automatically be continued from day to day until a qualified judge is present to hear and determine the matter.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 21. Trial by Jury**

In all contested probate and mental illness proceedings in the district court or in the county court or statutory probate court, county court at law or other statutory court exercising probate jurisdiction, the parties shall be entitled to trial by jury as in other civil actions.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1973, 63rd Leg., p. 1685, ch. 610, § 2.]

For effectiveness of 1973 Act, see note set out under § 5.

**§ 22. Evidence**

In proceedings arising under the provisions of this Code, the rules relating to witnesses and evidence that govern in the District Court shall apply so far as practicable except that where a will is to be probated, and in other probate matters where there is no opposing party or attorney of record upon

whom notice and copies of interrogatories may be served, service may be had by posting notice of intention to take depositions for a period of ten days as provided in this Code governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of ten days, commission may issue for taking the depositions, and the judge may file cross-interrogatories where no one appears, if he so desires.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 23. Decrees and Signing of Minutes

All decisions, orders, decrees, and judgments of the county court in probate matters shall be rendered in open court except in cases where it is otherwise specially provided. The probate minutes shall be approved and signed by the judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, such approval shall be entered on the preceding or succeeding day.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 24. Enforcement of Orders

The county or probate judge may enforce obedience to all his lawful orders against executors, administrators and guardians by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, unless otherwise expressly so provided in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 25. Executions

Executions in probate matters shall be directed "to any sheriff or any constable within the State of Texas," made returnable in sixty days, and shall be attested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court so far as applicable. Provided, however, that no execution directed to the sheriff or any constable of a specific county within this State shall be held defective if such execution was properly executed within such county by such officer.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 26. Attachments for Property

Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent, minor or incompetent that the executor or administrator or guardian is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed "to any sheriff or any constable within the State of Texas," commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge shall make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the

executor or administrator or guardian of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ. Provided, however, that no writ of attachment directed to the sheriff or any constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 27. Enforcement of Specific Performance

When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the court of the county where the letters testamentary or of administration on the estate of the deceased obligor were granted, and cause the personal representative of such estate to be cited to appear at a date stated in the citation and show cause why specific performance of such bond or written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same cannot be filed; and if it cannot be so filed, the same or the substance thereof shall be set forth in the complaint. After the service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand specific performance thereof, a decree shall be made ordering the personal representative to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this Section, it shall refer to and identify the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 28. Right of Appeal

Any person who may consider himself aggrieved by any decision, order, decree, or judgment of the court shall have the right to appeal therefrom to the district court of the county. Pending appeals from orders or judgments appointing administrators or guardians or temporary administrators or guardians, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate. If on appeal from the county court, a different administrator or guardian is appointed, he shall be substituted in such suits.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 29. Appeal Bonds of Personal Representatives**

When an appeal is taken by an executor, administrator, or guardian, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 30. Certiorari**

Any person interested in proceedings in probate may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward. Persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to apply for such revision and correction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 31. Bill of Review**

Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected on showing error therein; but no process or action under such decision, order or judgment shall be stayed except by writ of injunction, and no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment. Persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to apply for a bill of review.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 32. Common Law Applicable**

The rights, powers and duties of executors, administrators, and guardians shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 33. Issuance, Contents, Service, and Return of Citation, Notices, and Writs in Probate Matters**

**(a) When Citation or Notice Necessary.** No person need be cited or otherwise given notice except in situations in which this Code expressly provides for citation or the giving of notice; provided, however, that even though this Code does not expressly provide for citation, or the issuance or return of notice in any probate matter, the court may, in its discretion, require that notice be given, and prescribe the form and manner of service and return thereof.

**(b) Issuance by the Clerk or by Personal Representative.** The county clerk shall issue necessary citations, writs, and process in probate matters, and all notices not required to be issued by personal representatives, without any order from the court, unless such order is required by a provision of this Code.

**(c) Contents of Citation, Writ, and Notice.** Citation and notices issued by the clerk shall be signed and sealed by him, and shall be styled "The State of Texas." Notices required to be given by a personal representative shall be in writing and shall be signed by the representative in his official capacity. All citations and notices shall be directed to the person or persons to be cited or notified, shall be dated, and shall state the style and number of the proceeding, the court in which it is pending, and shall describe generally the nature of the proceeding or matter to which the citation or notice relates. No precept directed to an officer is necessary. A citation or notice shall direct the person or persons cited or notified to appear by filing a written contest or answer, or to perform other acts required of him or them and shall state when and where such appearance or performance is required. No citation or notice shall be held to be defective because it contains a precept directed to an officer authorized to serve it. All writs and other process except citations and notices shall be directed "To any sheriff or constable within the State of Texas," but shall not be held defective because directed to the sheriff or any constable of a specific county if properly served within the named county by such officer.

**(d) Where No Specific Form of Notice, Service, or Return is Prescribed, or When Provisions Are Insufficient or Inadequate.** In all situations in which this Code requires that notice be given, or that a person be cited, and in which a specific method of giving such notice or of citing such person, or a specific method of service and return of such citation or notice is not given, or an insufficient or inadequate provision appears with respect to any of such matters, or when any interested person so requests, such notice or citation shall be issued, served, and returned in such manner as the court, by written order, shall direct in accordance with this Code and the Texas Rules of Civil Procedure, and shall have the same force and effect as if the manner of service and return had been specified in this Code.

**(e) Service of Citation or Notice Upon Personal Representatives.** Except in instances in which this Code expressly provides another method of service, any notice or citation required to be served upon any personal representative or receiver shall be served by the clerk issuing such citation or notice. The clerk shall serve the same by sending the original thereof by registered or certified mail to the attorney of record for the personal representative or receiver, but if there is no attorney of record, to the personal representative or receiver.

**(f) Methods of Serving Citations and Notices.**

**(1) Personal Service.** Where it is provided that personal service shall be had with respect to a citation or notice, any such citation or notice must be served upon the attorney of record for the person to be cited. Notwithstanding the requirement of personal service, service may be made upon such attorney by any of the methods hereinafter specified for service

upon an attorney. If there is no attorney of record in the proceeding for such person, or if an attempt to make service upon the attorney was unsuccessful, a citation or notice directed to a person within this State must be served by the sheriff or constable upon the person to be cited or notified, in person, by delivering to him a true copy of such citation or notice at least ten (10) days before the return day thereof, exclusive of the date of service. Where the person to be cited or notified is absent from the State, or is a nonresident, such citation or notice may be served by any disinterested person competent to make oath of the fact. Said citation or notice shall be returnable at least ten (10) days after the date of service, exclusive of the date of service. The return of the person serving the citation or notice shall be endorsed on or attached to same; it shall show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer, and returned to the county clerk who issued same. If in either case such citation or notice is returned with the notation that the person sought to be served, whether within or without this State, cannot be found, the clerk shall issue a new citation or notice directed to the person or persons sought to be served and service shall be by publication.

**(2) Posting.** When citation or notice is required to be posted, it shall be posted by the sheriff or constable at the courthouse door of the county in which the proceedings are pending, or at the place in or near the courthouse where public notices customarily are posted, for not less than ten (10) days before the return day thereof, exclusive of the date of posting. The clerk shall deliver the original and a copy of such citation or notice to the sheriff or any constable of the proper county, who shall post said copy as herein prescribed and return the original to the clerk, stating in a written return thereon the time when and the place where he posted such copy. The date of posting shall be the date of service. When posting of notice by a personal representative is authorized or required, the method herein prescribed shall be followed, such notices to be issued in the name of the representative, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

**(3) Publication.** When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceedings are pending, and said publication shall be not less than ten (10) days before the return day thereof, exclusive of the date of publication. The date of publication which said newspaper

bears shall be the date of service. If no newspaper is published, printed, or of general circulation, in the county where citation or notice is to be had, service of such citation or notice shall be by posting.

**(4) Mailing.**

**(A)** When any citation or notice is required or permitted to be served by registered or certified mail, other than notices required to be given by personal representatives, the clerk shall issue such citation or notice and shall serve the same by sending the original thereof by registered or certified mail. Any notice required to be given by a personal representative by registered or certified mail shall be issued by him, and he shall serve the same by sending the original thereof by registered or certified mail. In either case the citation or notice shall be mailed with instructions to deliver to the addressee only, and with return receipt requested. The envelope containing such citation or notice shall be addressed to the attorney of record in the proceeding for the person to be cited or notified, but if there is none, or if returned undelivered, then to the person to be cited or notified. A copy of such citation or notice, together with the certificate of the clerk, or of the personal representative, as the case may be, showing the fact and date of mailing, shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

**(B)** When any citation or notice is required or permitted to be served by ordinary mail, the clerk, or the personal representative when required by statute or by order of the court, shall serve the same by mailing the original to the person to be cited or notified. A copy of such citation or notice, together with a certificate of the person serving the same showing the fact and time of mailing, shall be filed and recorded.

**(C)** When service is made by mail, the date of mailing shall be the date of service. Service by mail shall be made not less than twenty (20) days before the return day thereof, exclusive of the date of service.

**(D)** If a citation or notice served by mailing is returned undelivered, a new citation or notice shall be issued, and such citation or notice shall be served by posting.

**(g) Return of Citation or Notice.** All citations and notices issued by the clerk and served by personal service, by mail, by posting, or by publication, shall be returnable to the court from which issued on the first Monday after the service is perfected.

**(h) Sufficiency of Return in Cases of Posting.** In any probate matter where citation or notice is

required to be served by posting, and such citation or notice is issued in conformity with the applicable provision of this Code, the citation or notice and the service and return thereof shall be sufficient and valid if any sheriff or constable posts a copy or copies of such citation or notice at the place or places prescribed by this Code on a day which is sufficiently prior to the return day named in such citation or notice for the period of time for which such citation or notice is required to be posted to elapse before the return day of such citation or notice, and the fact that such sheriff or constable makes his return on such citation or notice and returns same into court before the period of time elapses for which such citation or notice is required to be posted, shall not affect the sufficiency or validity of such citation or notice or the service or return thereof, even though such return is made, and such citation or notice is returned into court, on the same day it is issued.

(i) **Proof of Service.** Proof of service in all cases requiring notice or citation, whether by publication, posting, mailing, or otherwise, shall be filed before the hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the affidavit of the person. Proof of service by publication shall be made by the affidavit of the publisher or that of an employee of the publisher, which affidavit shall show the date the issue of the newspaper bore, and have attached to or embodied in it a copy of the published notice or citation. In the case of service by mail, proof shall be made by the certificate of the clerk, or the affidavit of the personal representative or other person making such service, stating the fact and time of mailing. In the case of service by registered or certified mail, the return receipt shall be attached to the certificate, if a receipt has been returned.

(j) **Request for Notice.** At any time after an application is filed for the purpose of commencing any proceeding in probate, including, but not limited to, a proceeding for the probate of a will, grant of letters testamentary or of administration, determination of heirship, and the grant of letters of guardianship, any person interested in the estate or welfare of a ward, may file with the clerk a request in writing that he be notified of any and all, or of any specifically designated, motions, applications, or pleadings filed by any person, or by any particular persons specifically designated in the request. The fees and costs for such notices shall be borne by the person requesting them, and the clerk may require a deposit to cover the estimated costs of furnishing such person with the notice or notices requested. The clerk shall thereafter send to such person by ordinary mail copies of any of the documents specified in the request. Failure of the clerk to comply with the request shall not invalidate any proceeding. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 1, eff. Aug. 22, 1957; Acts 1971, 62nd Leg., p. 967, ch. 173, § 1, eff. Jan. 1, 1972; Acts 1971, 62nd Leg., p. 967, ch. 173, § 1, eff. Jan. 1, 1972.]

#### § 34. Service on Attorney

If any attorney shall have entered his appearance of record for any party in any proceeding in probate, all citations and notices required to be served on the party in such proceeding shall be served on the attorney, and such service shall be in lieu of service upon the party for whom the attorney appears. All notices served on attorneys in accordance with this section may be served by registered or certified mail or by delivery to the attorney in person. They may be served by a party to the proceeding or his attorney of record, or by the proper sheriff or constable, or by any other person competent to testify. A written statement by an attorney of record, or the return of the officer, or the affidavit of any other person showing service shall be prima facie evidence of the fact of service.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 970, ch. 173, § 2, eff. Jan. 1, 1972.]

#### § 35. Waiver of Notice

Any person legally competent who is interested in any hearing in a proceeding in probate may, in person or by attorney, waive in writing notice of such hearing. A guardian of the estate or a guardian ad litem may make such a waiver on behalf of his ward, and a trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 36. Duty and Responsibility of Judge

It shall be the duty of the judge of each county court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the duties enjoined upon them by law pertaining to such estates and wards. The judge shall annually examine into the condition of each of said estates, the well-being of each ward of the court, and the solvency of the bonds of personal representatives of estates and guardians of persons. He shall require such representatives or guardians, at any time he shall find that their bonds are not sufficient to protect such estate or wards, to execute new bonds in accordance with law. In each such case, he shall notify the personal representative or guardian, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the failure of the judge to use reasonable diligence in the performance of his duties, he shall be liable on his official bond to those damaged by such neglect.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 36A. When Power of Attorney not Terminated by Disability

When a principal designates another his attorney in fact or agent by power of attorney in writing and the writing contains the words "this power of attorney shall not terminate on disability of the principal" or similar words showing the intent of the principal that the power shall not terminate on his disability, then the powers of the attorney in fact or agent shall be exercisable by him on behalf of the principal notwithstanding later disability or incompetence of the principal. All acts done by the attorney in fact or agent, pursuant to the power, during any period of disability or incompetence of the principal, shall have the same effect and shall inure to the benefit of and bind the principal as if the principal were not disabled or incompetent. If a guardian shall thereafter be appointed for the principal, the powers of the attorney in fact or agent shall terminate upon the qualification of the guardian, and the attorney in fact or agent shall deliver to the guardian all assets of the estate of the ward in his possession and shall account to the guardian as he would to his principal had the principal himself terminated his powers.

[Acts 1971, 62nd Leg., p. 971, ch. 173, § 3, eff. Jan. 1, 1972.]

## CHAPTER II. DESCENT AND DISTRIBUTION

Sec.

37. Passage of Title Upon Intestacy and Under a Will.

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43. Determination of Per Capita and Per Stirpes Distribution.

44. Advancement Brought Into Hotchpotch.

45. Community Estate.

46. Joint Tenancies Abolished.

47. Passage of Title Upon Simultaneous Death.

### § 37. Passage of Title Upon Intestacy and Under a Will

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or legatees of such estate and the donees of such powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except such as is exempted by law; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to possession of the estate as it existed at the death of the testator or intestate, with the exception afore-

said; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1703, ch. 556, § 2, eff. June 10, 1969.]

### § 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent Under a Will or by Inheritance by a Person Who is Competent

Any person who may be entitled to receive any property under any will of or by inheritance from a decedent and who intends to effect disclaimer irrevocably of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein, shall be effective as of the death of decedent and the property subject thereof shall pass as if the person disclaiming had predeceased the decedent unless decedent's will provides otherwise. Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term "disclaimer" as used in this section shall include "renunciation."

The following shall apply to such disclaimers:

(a) **Written Memorandum of Disclaimer and Filing Thereof.** In the case of property receivable under a will or by inheritance, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate and filed not later than six months after death of decedent in the probate court in which decedent's will has been probated or in which administration of decedent's estate is pending or which has before it an application for either of same; provided, however, if there has been no will of decedent probated or filed for probate nor any administration or application for administration of decedent's estate within six months of decedent's death, such disclaimer shall be filed with the county clerk of the county of decedent's residence, if decedent be a resident of this state, or in a county in which decedent owned real property at the time of death, if decedent was not a resident of this state, and recorded by such county clerk in the deed records of that county. The time to file and serve a disclaimer may be extended by order entered at the discretion of the probate court having jurisdiction over the estate of the decedent on a petition to such probate court by the person so disclaiming filed before or after the expiration of six months after death show-

ing to the satisfaction of such court reasonable cause for such extension and on notice to such persons and in such manner as the probate court may direct, but in no event may such petition be filed after the expiration of nine months from the death of decedent.

**(b) Notice of Disclaimer.** In the event that a personal representative of a decedent is qualified and acting, copies of any written memorandum of disclaimer shall be served by registered or certified mail or in such other manner as the probate court may direct: (1) upon any qualified and acting personal representative of decedent or, if none, but application for appointment of such a representative be pending, upon any applicant seeking probate of decedent's will or administration of decedent's estate; and (2) upon all legatees, devisees, beneficiaries and heirs-at-law of decedent other than the person disclaiming whose names and addresses are set forth in the petition for letters testamentary or letters of administration or, if no application be filed, whose names and addresses are known to or are by reasonable inquiry ascertainable by the person disclaiming, but service of such written memorandum shall not be required upon more than four of such persons in any event.

**(c) Power of Testator to Provide for Disclaimer.** Nothing herein shall prevent a testator from providing in a will for the making of disclaimers by legatees, devisees and beneficiaries and for the disposition of disclaimed property in a manner different from the provisions hereof.

**(d) Revocation of Disclaimer.** Any disclaimer filed and served under this section may be revoked by the person who has so disclaimed only when permitted by order entered by the probate court having jurisdiction over the estate of the decedent. An application for such revocation shall be made to such probate court on a petition by the disclaiming person, or, if the person having disclaimed has since died or become incompetent, then by the duly appointed and qualified personal representative of such person when so authorized by the court having jurisdiction of the estate of the incompetent or person who has died after such disclaimer. Applicant shall show such probate court reasonable cause for the revocation at a hearing held after notice to such persons and in such manner as the probate court may direct. Any petition for revocation shall be filed within nine months after decedent's death and not thereafter.

**(e) Partial Disclaimer.** Any person who may be entitled to receive any property under any will of or by inheritance from a decedent may disclaim such property in whole or in part, and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single,

aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer, and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

**(f) Disclaimer After Acceptance.** No disclaimer shall be effective after the acceptance of the property by the heir, legatee, devisee, or beneficiary. For the purpose of this section, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of heir, legatee, devisee, or beneficiary.

[Acts 1971, 62nd Leg., p. 2954, ch. 979, § 1, eff. Aug. 30, 1971.]

**§ 38. Persons Who Take Upon Intestacy**

**(a) Intestate Leaving No Husband or Wife.** Where any person, having title to any estate, real, personal or mixed, shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.
3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.
4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on

without end, passing in like manner to the nearest lineal ancestors and their descendants.

**(b) Intestate Leaving Husband or Wife.** Where any person having title to any estate, real, personal or mixed, other than a community estate, shall die intestate as to such estate, and shall leave a surviving husband or wife, such estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 39. No Distinction Because of Property's Source

There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 40. Inheritance By and From an Adopted Child

For purposes of inheritance under the laws of descent and distribution, an adopted child shall be regarded as the child of the parent or parents by adoption, such adopted child and its descendants inheriting from and through the parent or parents by adoption and their kin the same as if such child were the natural legitimate child of such parent or parents by adoption, and such parent or parents by adoption and their kin inheriting from and through such adopted child the same as if such child were the natural legitimate child of such parent or parents by adoption. The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents. Nothing herein shall prevent any parent by adoption from

disposing of his property by will according to law. The presence of this Section specifically relating to the rights of adopted children shall in no way diminish the rights of such children, under the laws of descent and distribution or otherwise, which they acquire by virtue of their inclusion in the definition of "child" which is contained in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 41. Matters Affecting and Not Affecting the Right to Inherit

**(a) Persons Not in Being.** No right of inheritance shall accrue to any persons other than to children or lineal descendants of the intestate, unless they are in being and capable in law to take as heirs at the time of the death of the intestate.

**(b) Heirs of Whole and Half Blood.** In situations where the inheritance passes to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part be of the half blood only, of the intestate, each of those of half blood shall inherit only half so much as each of those of the whole blood; but if all be of the half blood, they shall have whole portions.

**(c) Alienage.** No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

**(d) Convicted Persons and Suicides.** No conviction shall work corruption of blood or forfeiture of estate, except in the case of a beneficiary in a life insurance policy or contract who is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, in which case the proceeds of such insurance policy or contract shall be paid as provided in the Insurance Code of this State, as same now exists or is hereafter amended; nor shall there be any forfeiture by reason of death by casualty; and the estates of those who destroy their own lives shall descend or vest as in the case of natural death.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 2, eff. June 12, 1969.]

### § 42. Inheritance Rights of Illegitimate Children

For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property, and the making of family allowances. Where a man, having by a woman a child or children shall afterwards intermarry with such woman, such child or children shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 43. Determination of Per Capita and Per Stirpes Distribution

When the intestate's children, or brothers, sisters, uncles, and aunts, or any other relatives of the deceased standing in the first or same degree alone come into the distribution upon intestacy, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead shall have right to distribution upon intestacy, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 44. Advancement Brought Into Hotchpotch

Where any of the heirs of a person dying intestate shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotch-potch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotch-potch at the time it was advanced. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless proved to be an advancement. If an advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to had he survived the intestate, then the heir shall be charged only with such portion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited had there been no advancement.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 45. Community Estate

Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. In every case, the community estate passes charged with the debts against it.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 46. Joint Tenancies Abolished

Where two (2) or more persons hold an estate, real, personal, or mixed, jointly, and one (1) joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. Provided, however, that by an agreement in writing of joint owners of property the interest of any joint owner who dies may be made to survive to the surviving joint owner or joint owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1961, 57th Leg., p. 233, ch. 120, § 1, eff. May 15, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, § 3, eff. June 12, 1969.]

#### § 47. Passage of Title Upon Simultaneous Death

(a) **When Property Disposed of as if Each Survived.** When the title to property or the devolution thereof depends upon priority of death and there is no direct evidence that persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Section.

(b) **Disposal of Community Property.** When a husband and wife have died, leaving community property, and there is no direct evidence that they have died otherwise than simultaneously, one-half of all community property shall be distributed as if the husband had survived, and the other one-half thereof shall be distributed as if the wife had survived. The provisions of this subsection apply to proceeds of life or accident insurance which are community property and become payable to the estate of either the husband or the wife, as well as to other kinds of community property.

(c) **Survival of Beneficiaries.** If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and there is no direct evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. Provided, however, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die, and there is no direct evidence that they have died otherwise than simultaneously, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

(d) **Joint Owners.** If any stocks, bonds, bank deposits, or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other, and there is no direct evidence that the joint owners shall have died otherwise than simultaneously, these assets shall be dis-

tributed one-half as if one joint owner had survived and the other one-half as if the other joint owner had survived. If there are more than two joint owners and there is no direct evidence that all have died otherwise than simultaneously, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner survived.

(e) **Insured and Beneficiary.** When the insured and a beneficiary in a policy of life or accident insurance have died and there is no direct evidence that they have died otherwise than simultaneously, the insured shall be deemed to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such. The provisions of this subsection shall not prevent the application of subsection (b) above to the proceeds of life or accident insurance which are community property.

(f) **Instruments Providing Different Disposition.** When provision has been made in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation, for disposition of property different from the provisions of this Section, this Section shall not apply.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1965, 59th Leg., p. 279, ch. 119, § 1.]

### CHAPTER III. DETERMINATION OF HEIRSHIP

Sec.

- 48. Proceedings to Declare Heirship. When and Where Instituted.
- 49. Who May Institute Proceedings to Declare Heirship.
- 50. Notice.
- 51. Transfer of Proceeding When Will Probated or Administration Granted.
- 52. Recorded Instruments as Prima Facie Evidence.
- 53. Evidence; Unknown Parties.
- 54. Judgment.
- 55. Effect of Judgment.
- 56. Filing of Certified Copy of Judgment.

#### § 48. Proceedings to Declare Heirship. When and Where Instituted

(a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which any of the real property belonging to such estate is situated, or if there is no such real estate, then of the county in

which any personal property belonging to such estate is found, may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and proceedings therefor shall be known as proceedings to declare heirship.

(b) If an application for determination of heirship is filed within four (4) years from the date of the death of the decedent, the applicant may request that the court determine whether a necessity for administration exists. The court shall hear evidence upon the issue and make a determination thereof in its judgment.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

#### § 49. Who May Institute Proceedings to Declare Heirship

Such proceedings may be instituted and maintained in any of the instances enumerated above by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent. In such a case an application shall be filed in a proper court stating the name, time, and place of death and the names and residences of the heirs of the decedent, if known to the applicant, and, if the time and place of death or the names and residences of all of the heirs of such decedent be not definitely known to such applicant, then the application shall set forth all of the material facts and circumstances within the knowledge or information of such applicant, as may reasonably tend to show the time and place of death of the decedent, and the names and places of residence of the heirs, and the true share and interest of each applicant, and of each heir, in the estate of such decedent. Such application shall, so far as is known to any of the applicants, contain a general description of all the real property of the decedent and a general description of all the personal property belonging to the estate of the decedent. If any of the foregoing information is not set out in the application, the reason for the omission shall be stated. Such application shall be supported by the affidavit of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

**§ 50. Notice.**

Citation shall be served by registered or certified mail upon all defendants whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as defendants in the application. Unknown heirs, and known heirs whose addresses cannot be ascertained, shall be served by publication in the county in which the proceedings are commenced, and if the decedent resided in another county, then a citation shall also be published in the county of his last residence. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

**§ 51. Transfer of Proceeding When Will Probated or Administration Granted**

If an administration upon the estate of any such decedent shall be granted in the State, or if the will of such decedent shall be admitted to probate in this State, after the institution of a proceeding to declare heirship, the court in which such proceeding is pending shall, by an order entered of record therein, transfer the cause to the court of the county in which such administration shall have been granted, or such will shall have been probated, and thereupon the clerk of the court in which such proceeding was originally filed shall send to the clerk of the court named in such order, a certified transcript of all pleadings, docket entries, and orders of the court in such cause. The clerk of the court to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court and shall docket such cause, and the same shall thereafter proceed as though originally filed in that court. The court, in its discretion, may consolidate the cause so transferred with the pending proceeding. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

**§ 52. Recorded Instruments as Prima Facie Evidence**

Any statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent shall be received in a proceeding to declare heirship, or in any suit involving title to real or personal property, as prima facie evidence of the facts therein stated, when such statement is contained in either an affidavit or any other instrument legally executed and acknowledged, or any judgment of a court of record, if such affidavit or instrument has been of record for five years or more in the deed records of any county in this state in which such real or personal property is located at the time the suit is instituted, or in the deed records of any county of this state in which the decedent had his domicile or fixed place of residence at the time of his death. If there is any error in the statement of facts in such recorded affidavit or instrument, the true facts may be proved by anyone

interested in the proceeding in which said affidavit or instrument is offered in evidence. This statute shall be cumulative of all other statutes on the same subject, and shall not be construed as abrogating any right to present evidence conferred by any other statute or rule of law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 4, eff. June 12, 1969.]

**§ 53. Evidence; Unknown Parties**

(a) The court in its discretion may require all or any part of the evidence admitted in a proceeding to declare heirship to be reduced to writing, and subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court.

(b) If it appears to the court that there are or may be living heirs whose names or whereabouts are unknown, or that any defendant is a minor or an incompetent, the court may, in its discretion, appoint an attorney to represent the interests of any such persons, but no attorney shall be appointed except when the court finds that such appointment is necessary to protect the interests of the persons for whom the attorney is appointed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

**§ 54. Judgment**

The judgment of the court in a proceeding to declare heirship shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent. If the proof is in any respect deficient, the judgment shall so state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

**§ 55. Effect of Judgment**

(a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by writ of certiorari or bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.

(b) Although such judgment may later be modified, set aside, or nullified, it shall nevertheless be conclusive in any suit between any heir omitted from the judgment and a bona fide purchaser for value who has purchased real or personal property after entry of the judgment without actual notice of the claim of the omitted heir. Similarly, any person who has delivered funds or property of the decedent

to the persons declared to be heirs in the judgment, or has engaged in any other transaction with them, in good faith, after entry of such judgment, shall not be liable therefor to any person.

(c) If the court states in its judgment that there is no necessity for administration on the estate, such recital shall constitute authorization to all persons owing any money to the estate of the decedent, or having custody of any property of such estate, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the heirs as determined in the judgment, to pay, deliver, or transfer such property or evidence of property rights to such heirs, or to purchase property from such heirs, without liability to any creditor of the estate or other person. Such heirs shall be entitled to enforce their right to payment, delivery, or transfer by suit. Nothing in this chapter shall affect the rights or remedies of the creditors of the decedent except as provided in this subsection.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972.]

#### § 56. Filing of Certified Copy of Judgment

A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment is situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

Sec.

- 57. Who May Execute a Will.
- 58. Interests Which May Pass Under a Will.
- 58a. Devises or Bequests to Trustees.
- 59. Requisites of a Will.
- 60. Exception Pertaining to Holographic Wills.
- 61. Bequest to Witness.
- 62. Corroboration of Testimony of Interested Witness.
- 63. Revocation of Wills.
- 64. Capacity to Make a Nuncupative Will.
- 65. Requisites of a Nuncupative Will.
- 66. Posthumous Children.
- 67. After-Born or After-Adopted Children.
- 68. Prior Death of Legatee.
- 69. Voidness Arising From Divorce.
- 70. Provision in Will for Management of Separate Property.
- 71. Deposit of Will With Court During Testator's Lifetime.

#### § 57. Who May Execute a Will

Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being

of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1967, 60th Leg., p. 801, ch. 334, § 1, eff. Aug. 28, 1967, 90 days after date of adjournment.]

#### § 58. Interests Which May Pass Under a Will

Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title, and interest in possession, expectancy, reversion, or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments, or rents charged upon or issuing out of them, or shall have of, in or to any personal property whatever, including choses in action, subject to the limitations prescribed by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 58a. Devises or Bequests to Trustees

By a will duly executed pursuant to the provisions of this Code, a testator may devise or bequeath property to the trustee of any trust (including an unfunded life insurance trust, even though the trustor has reserved any or all rights of ownership in the insurance contracts) the terms of which are evidenced by a written instrument in existence before or concurrently with the execution of such will and which is identified in such will, even though such trust is subject to amendment, modification, revocation or termination. The property so devised or bequeathed shall be added to the corpus of such trust to be administered as a part thereof and shall thereafter be governed by the terms and provisions of the instrument establishing such trust, including written amendments or modifications thereto made before the death of the testator. An entire revocation of the trust prior to the testator's death shall cause the devise or bequest to lapse.

[Acts 1961, 57th Leg., p. 43, ch. 29, § 1.]

#### § 59. Requisites of a Will

Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two (2) or more credible witnesses above the age of fourteen (14) years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this State. Provided that nothing shall require an affidavit, acknowledgment or certificate of any testator or testatrix as a prerequisite to

self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS  
 COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this date personally appeared \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said \_\_\_\_\_, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

\_\_\_\_\_  
 Testator

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Witness

Subscribed and acknowledged before me by the said \_\_\_\_\_, testator, and subscribed and sworn to before me by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_.

(SEAL)

(Signed) \_\_\_\_\_  
 (Official Capacity of Officer)

A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1961, 57th Leg., p. 936, ch. 412, § 1, eff. June 17, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, § 5, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 974, ch. 173, § 5, eff. Jan. 1, 1972.]

Section 2 of Acts 1961, 57th Leg., ch. 412 provided: "All wills self-proved prior to the passage of this Act which were executed in compliance with Section 59, of the Texas Probate Code are in all things relating to self-proving hereby ratified."

**§ 60. Exception Pertaining to Holographic Wills**

Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such a will may be made self-proved at any time during the testator's lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 6, eff. June 12, 1969.]

**§ 61. Bequest to Witness**

Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 62. Corroboration of Testimony of Interested Witness**

In the situation covered by the preceding Section, the bequest to the subscribing witness shall not be void if his testimony proving the will is corroborated by one or more disinterested and credible persons who testify that the testimony of the subscribing witness is true and correct, and such subscribing witness shall not be regarded as an incompetent or non-credible witness under Section 59 of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 63. Revocation of Wills**

No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 64. Capacity to Make a Nuncupative Will**

Any person who is competent to make a last will and testament may dispose of his personal property by a nuncupative will made under the conditions and limitations prescribed in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 65. Requisites of a Nuncupative Will**

No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his home or where he has resided for ten days or more next preceding the date of such will, except when the deceased is taken sick away from home and dies before he returns to such home; nor when the value exceeds Thirty Dollars, unless it be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 66. Posthumous Children**

When a testator shall have children born and his wife is enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament; provided, however, that where the surviving wife is the mother of all of the testator's children and said surviving wife is the principal beneficiary in said testator's last will and testament to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions shall not apply or be considered in the construction of said last will and testament.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 67. After-Born or After-Adopted Children**

(a) **Where a Child Was Living When Will Was Executed.** If a testator having a child or children born or adopted at the time of making his last will and testament shall, at his death, leave a child or children born or adopted after the making of such last will and testament, the child or children so after-born or after-adopted and pretermitted shall, unless provided for by settlement, succeed to the same portion of the testator's estate as they would have been entitled to if the testator had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament; provided, however, that where the surviving husband or wife is the father or mother of all of testator's children, exclusive of adopted children, and said surviving husband or wife is the principal beneficiary in said testator's last will and testament, to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Section shall not apply or be considered in the construction of said last will and testament.

(b) **Where No Child Was Living When Will Was Executed.** Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a

child, either born to him or adopted by him, or shall leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born or after-adopted child, and shall be void, unless such child dies within one year after the death of the testator; provided, however, that where a surviving husband or wife is the father or mother of all of the testator's children, exclusive of adopted children, and said surviving husband or wife is the principal beneficiary in said testator's last will and testament, to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Section shall not apply or be considered in the construction of said last will and testament.

(c) **Definition of "Children."** As used in this Section and in the preceding Section, the term "children" includes descendants of whatever degree they may be, it being understood that they are counted only for the child they represent.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 68. Prior Death of Legatee**

Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of such testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death, but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 69. Voidness Arising From Divorce**

If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, shall be null and void and of no effect.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 70. Provision in Will for Management of Separate Property**

The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep testator's separate property together until each of the several distributees shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and subject to such other restrictions as are imposed by such will; provided, that any child or distributee entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 71. Deposit of Will With Court During Testator's Lifetime**

(a) **Deposit of Will.** A will may be deposited by the person making it, or by another person for him,

with the county clerk of the county of the testator's residence. Before accepting any will for deposit, the clerk may require such proof as shall be satisfactory to him concerning the testator's identity and residence. The clerk, on being paid a fee of Three Dollars therefor, shall receive and keep the will, and shall give a certificate of deposit for it. All wills so filed shall be numbered by the clerk in consecutive order, and all certificates of deposit shall bear like numbers respectively.

**(b) How Will Shall Be Enclosed.** Every will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper, which shall have indorsed thereon "Will of," followed by the name, address and signature of the testator. The wrapper must also be indorsed with the name and current address of each person who shall be notified of the deposit of the will after the death of the testator.

**(c) Index To Be Kept of All Wills Deposited.** Each county clerk shall keep an index of all wills so deposited with him.

**(d) To Whom Will Shall Be Delivered.** During the lifetime of the testator, a will so deposited shall be delivered only to the testator, or to another person authorized by him by a sworn written order. Upon delivery of the will to the testator or to a person so authorized by him, the certificate of deposit issued for the will shall be surrendered by the person to whom delivery of the will is made; provided, however, that in lieu of the surrender of such certificate, the clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

**(e) Proceedings Upon Death of Testator.** If there shall be submitted to the clerk an affidavit to the effect that the testator of any will deposited with the clerk has died, or if the clerk shall receive any other notice or proof of the death of such testator which shall suffice to convince him that the testator is deceased, the clerk shall notify by registered mail with return receipt requested the person or persons named on the indorsement of the wrapper of the will that the will is on deposit in his office, and, upon request, he shall deliver the will to such person or persons, taking a receipt therefor. If the notice by registered mail is returned undelivered, or if a clerk has accepted a will which does not specify on the wrapper the person or persons to whom it shall be delivered, the clerk shall open the wrapper and inspect the will. If an executor is named in the will, he shall be notified by registered mail, with return receipt requested, that the will is on deposit, and, upon request, the clerk shall deliver the will to the person so named as executor. If no executor is named in the will, or if the person so named is deceased, or fails to take the will within thirty days after the clerk's notice to him is mailed, or if notice to the person so named is returned undelivered, the clerk shall give notice by registered mail, with return receipt requested, to the devisees and legatees named in the will that the will is on deposit, and,

upon request, the clerk shall deliver the will to any or all of such devisees and legatees.

**(f) Depositing Has No Legal Significance.** These provisions for the depositing of a will during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for such a will, and no will which has been so deposited shall be treated for purposes of probate any differently than any will which has not been so deposited. In particular, and without limiting the generality of the foregoing, a will which is not deposited shall be admitted to probate upon proof that it is the last will and testament of the testator, notwithstanding the fact that the same testator has on deposit with the court a prior will which has been deposited in accordance with the provisions of this Code.

**(g) Depositing Does Not Constitute Notice.** The fact that a will has been deposited as provided herein shall not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or as to the contents thereof. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## CHAPTER V. PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

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### PART 1. ESTATES OF DECEDENTS

#### § 72. Proceedings Before Death; Administration in Absence of Direct Evidence of Death; Distribution; Limitation of Liability; Restoration of Estate; Validation of Proceedings

(a) The probate of a will or administration of an estate of a living person shall be void; provided, however, that the court shall have jurisdiction to determine the fact, time and place of death, and where application is made for the grant of letters testamentary or of administration upon the estate of a person believed to be dead and there is no direct evidence that such person is dead but the death of such person shall be proved by circumstantial evidence to the satisfaction of the court, such letters shall be granted. Distribution of the estate to the persons entitled thereto shall not be made by the personal representative until after the expiration of three (3) years from the date such letters are granted. If in a subsequent action such person shall be proved by direct evidence to have been living at any time subsequent to the date of grant of such letters, neither the personal representative nor anyone who shall deliver said estate or any part thereof to another under orders of the court shall be liable therefor; and provided further, that such person shall be entitled to restoration of said estate or the residue thereof with the rents and profits therefrom, except real or personal property sold by the personal representative or any distributee, his successors or assigns, to bona fide purchasers for value, in which

case the right of such person to the restoration shall be limited to the proceeds of such sale or the residue thereof with the increase thereof. In no event shall the bonds of such personal representative be void provided, however, that the surety shall have no liability for any acts of the personal representative which were done in compliance with or approved by an order of the court. Probate proceedings upon estates of persons believed to be dead brought prior to the effective date of this Act and all such probate proceedings then pending, except such probate proceedings contested in any litigation pending on the effective date of this Act, are hereby validated insofar as the court's finding of death of such person is concerned.

(b) In any case in which the fact of death must be proved by circumstantial evidence, the court, at the request of any interested person, may direct that citation be issued to the person supposed to be dead, and served upon him by publication and by posting, and by such additional means as the court may by its order direct. After letters testamentary or of administration have been issued, the court may also direct the personal representative to make a search for the person supposed to be dead by notifying law enforcement agencies and public welfare agencies in appropriate locations that such person has disappeared, and may further direct that the applicant engage the services of an investigative agency to make a search for such person. The expenses of search and notices shall be taxed as costs and shall be paid out of the property of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1959, 56th Leg., p. 950, ch. 442, § 1, eff. May 30, 1959; Acts 1971, 62nd Leg., p. 975, ch. 173, § 7, eff. Jan. 1, 1972.]

#### § 73. Period for Probate

(a) No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

(b) If any person shall purchase real or personal property from the heirs of a decedent more than four years from the date of the death of the decedent, for value, in good faith, and without knowledge of the existence of a will, such purchaser shall be held to have good title to the interest which such heir or heirs would have had in the absence of a will, as against the claims of any devisees or legatees under any will which may thereafter be offered for probate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 8, eff. Jan. 1, 1972.]

#### § 74. Time to File Application for Letters Testamentary or Administration

All applications for the grant of letters testamentary or of administration upon an estate must be

filed within four years after the death of the testator or intestate; provided, that this section shall not apply in any case where administration is necessary in order to receive or recover funds or other property due to the estate of the decedent.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 8, eff. Jan. 1, 1972.]

**§ 75. Duty and Liability of Custodian of Will**

Upon receiving notice of the death of a testator, the person having custody of the testator's will shall deliver it to the clerk of the court which has jurisdiction of the estate. On sworn written complaint that any person has the last will of any testator, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited by personal service to appear before him and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless delivery is made or good cause shown, if satisfied that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. Any person refusing to deliver such will or papers shall also be liable to any person aggrieved for all damages sustained as a result of such refusal, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 76. Persons Who May Make Application**

An executor named in a will or any interested person may make application to the court of a proper county:

(a) For an order admitting a will to probate, whether the same is written or unwritten, in his possession or not, is lost, is destroyed, or is out of the State.

(b) For the appointment of the executor named in the will.

(c) For the appointment of an administrator, if no executor is designated in the will, or if the person so named is disqualified, or refuses to serve, or is dead, or resigns, or if there is no will. An application for probate may be combined with an application for the appointment of an executor or administrator; and a person interested in either the probate of the will or the appointment of a personal representative may apply for both.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 77. Order of Persons Qualified to Serve**

Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.

(b) To the surviving husband or wife.

(c) To the principal devisee or legatee of the testator.

(d) To any devisee or legatee of the testator.

(e) To the next of kin of the deceased, the nearest in order of descent first, and so on.

(f) To a creditor of the deceased.

(g) To any person of good character residing in the county who applies therefor.

(h) To any other person not disqualified under the following Section. When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 78. Persons Disqualified to Serve as Executor or Administrator**

No person is qualified to serve as an executor or administrator who is:

(a) A minor; or

(b) An incompetent; or

(c) A convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia, unless such person has been duly pardoned, or his civil rights restored, in accordance with law; or

(d) A non-resident (natural person or corporation) of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or

(e) A corporation not authorized to act as a fiduciary in this State; or

(f) A person whom the court finds unsuitable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 2a, eff. Aug. 22, 1957; Acts 1969, 61st Leg., p. 1922, ch. 641, § 7, eff. June 12, 1969.]

**§ 79. Waiver of Right to Serve**

The surviving husband or wife, or, if there be none, the heirs or any one of the heirs of the deceased to the exclusion of any person not equally entitled, may, in open court, or by power of attorney duly authenticated and filed with the county clerk of the county where the application is filed, renounce his right to letters testamentary or of administration in favor of another qualified person, and thereupon the court may grant letters to such person.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 80. Prevention of Administration**

(a) **Method of Prevention.** When application is made for letters of administration upon an estate by a creditor, and other interested persons do not desire

an administration thereupon, they can defeat such application:

(1) By the payment of the claim of such creditor; or

(2) By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal, or barred by limitation; or

(3) By executing a bond payable to, and to be approved by, the judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court in the county having jurisdiction of the amount.

**(b) Filing of Bond.** The bond provided for, when given and approved, shall be filed with the county clerk, and any creditor for whose protection it was executed may sue thereon in his own name for the recovery of his debt.

**(c) Bond Secured by Lien.** A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for herein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 81. Contents of Application for Letters Testamentary

**(a) For Probate of a Written Will.** A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. An application for probate of a written will shall state:

(1) The name and domicile of each applicant.

(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.

(3) Facts showing that the court has venue.

(4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.

(5) The date of the will, the name and residence of the executor named therein, if any, and if none be named, then the name and residence of the person to whom it is desired that letters be issued, and also the names and residences of the subscribing witnesses, if any.

(6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.

(7) That such executor or applicant, or other person to whom it is desired that letters be issued, is not disqualified by law from accepting letters.

(8) Whether the decedent was ever divorced, and if so, when and from whom.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with

reasonable diligence be ascertained by him, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

**(b) For Probate of Written Will Not Produced.** When a written will cannot be produced in court, in addition to the requirements of Subsection (a) hereof, the application shall state:

(1) The reason why such will cannot be produced.

(2) The contents of such will, as far as known.

(3) The date of such will and the executor appointed therein, if any, as far as known.

(4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

**(c) Nuncupative Wills.** An application for probate of a nuncupative will shall contain all applicable statements required with respect to written wills in the foregoing subsections and also:

(1) The substance of testamentary words spoken.

(2) The names and residences of the witnesses thereto.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

### § 82. Contents of Application for Letters of Administration

An application for letters of administration when no will, written or oral, is alleged to exist shall state:

(a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator.

(b) The name and intestacy of the decedent, and the fact, time and place of death.

(c) Facts necessary to show venue in the court to which the application is made.

(d) The nature and probable value of the estate.

(e) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 83. Procedure Pertaining to a Second Application

**(a) Where Original Application Has Not Been Heard.** If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if

any, should be admitted to probate, or whether the decedent died intestate.

**(b) Where First Will Has Been Admitted to Probate.** If, after a will has been admitted to probate, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall determine whether the former probate should be set aside, and whether such other will should be admitted to probate, or whether the decedent died intestate.

**(c) Where Letters of Administration Have Been Granted.** Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but, if no such executor be named in the will, or if the executor named be disqualified, be dead, or shall renounce the executorship, or shall neglect or otherwise fail or be unable to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, prior to the qualification of the executor or of the administrator with the will annexed, shall be as valid as if no such will had been discovered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 84. Proof of Written Will Produced in Court

**(a) Self-Proved Will.** If a will is self-proved as provided in this Code, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

**(b) Attested Written Will.** If not self-proved as provided in this Code, an attested written will produced in court may be proved:

(1) By the sworn testimony or affidavit of one or more of the subscribing witnesses thereto, taken in open court.

(2) If all the witnesses are non-residents of the county, or those who are residents are unable to attend court, by the sworn testimony of any one or more of them by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if no opposition in writing to such will is filed on or before the date set for hearing thereon, then by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition in the manner provided herein, to the signature or the handwriting evidenced thereby of one or more of the attesting witnesses, or of the testator, if he signed the will; or, if it be shown under oath to the satisfaction of the court that, diligent search having

been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(3) If none of the witnesses is living, or if all of such witnesses are members of the armed forces of the United States of America or of any auxiliary thereof, or of the armed forces reserve of the United States of America or of any auxiliary thereof, or of the Maritime Service, and are beyond the jurisdiction of the court, by two witnesses to the handwriting of one or both of the subscribing witnesses thereto, or of the testator, if signed by him, and such proof may be either by sworn testimony or affidavit taken in open court, or by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

**(b) Holographic Will.** If not self-proved as provided in this Code, a will wholly in the handwriting of the testator may be proved by two witnesses to his handwriting, which evidence may be by sworn testimony or affidavit taken in open court, or, if such witnesses are non-residents of the county or are residents who are unable to attend court, by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions.

**(c) Depositions if No Contest Filed.** If no contest has been filed, depositions for the purpose of establishing a will may be taken in the same manner as provided in this Code for the taking of depositions where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served; and, in such event, this Subsection, rather than the preceding portions of this Section which provide for the taking of depositions under the same rules as depositions in other civil actions, shall be applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 85. Proof of Written Will Not Produced in Court

A written will which cannot be produced in court shall be proved in the same manner as provided in the preceding Section for an attested written will or an holographic will, as the case may be, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court; but, in addition thereto, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be

substantially proved by the testimony of a credible witness who has read it or heard it read.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 86. Proof of Nuncupative Will

(a) **Notice and Proof of Nuncupative Will.** No nuncupative will shall be proved within fourteen days after the death of the testator, or until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so.

(b) **Testimony Pertaining to Nuncupative Wills.** After six months have elapsed from the time of speaking the alleged testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof shall have been committed to writing within six days after making the will.

(c) **When Value of Estate Exceeds Thirty Dollars.** When the value of the estate exceeds Thirty Dollars, a nuncupative will must be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 87. Testimony to Be Committed to Writing

All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed, and sworn to in open court by the witness or witnesses, and filed by the clerk; provided, however, that in any contested case, the court may, upon agreement of the parties, and in the event of no agreement on its own motion, dismiss this requirement.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

### § 88. Proof Required for Probate and Issuance of Letters Testamentary or of Administration

(a) **General Proof.** Whenever an applicant seeks to probate a will or to obtain issuance of letters testamentary or of administration, he must first prove to the satisfaction of the court:

(1) That the person is dead, and that four years have not elapsed since his decease and prior to the application; and

(2) That the court has jurisdiction and venue over the estate; and

(3) That citation has been served and returned in the manner and for the length of time required by this Code; and

(4) That the person for whom letters testamentary or of administration are sought is entitled thereto by law and is not disqualified.

(b) **Additional Proof for Probate of Will.** To obtain probate of a will, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of

executing the will, was at least eighteen years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries thereof, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

(c) **Additional Proof for Issuance of Letters Testamentary.** If letters testamentary are to be granted, it must appear to the court that proof required for the probate of the will has been made, and, in addition, that the person to whom the letters are to be granted is named as executor in the will.

(d) **Additional Proof for Issuance of Letters of Administration.** If letters of administration are to be granted, the applicant must also prove to the satisfaction of the court that there exists a necessity for an administration upon such estate.

(e) **Proof Required Where Prior Letters Have Been Granted.** If letters testamentary or of administration have previously been granted upon the estate, the applicant need show only that the person for whom letters are sought is entitled thereto by law and is not disqualified.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 8, eff. June 12, 1969.]

### § 89. Action of Court on Probated Will

Upon the completion of hearing of an application for the probate of a will, if the Court be satisfied that such will should be admitted to probate, an order to that effect shall be entered. Certified copies of such will and the probate of the same, or of the record thereof, and the record of testimony, may be recorded in other counties, and may be used in evidence, as the original might be, on the trial of the same matter in any other court, when taken there by appeal or otherwise.

Probate of Wills as Muniments of Title. In each instance where the Court is satisfied that a will should be admitted to probate, and where the Court is further satisfied that there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate, or for other reason finds that there is no necessity for administration upon such estate, the Court may admit such will to probate as a Muniment of Title.

The order admitting a will to probate as a Muniment of Title shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons

described in such will as entitled to receive the particular asset without administration. The person or persons entitled to property under the provisions of such wills shall be entitled to deal and treat with the properties to which they are so entitled in the same manner as if the record of title thereof were vested in their names.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1961, 57th Leg., p. 1072, ch. 480, § 1.]

#### § 90. Custody of Probated Wills

All original wills, together with the probate thereof, shall be deposited in the office of the county clerk of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed for inspection to another place upon order by the court where probated. If the court shall order an original will to be removed to another place for inspection, the person removing such original will shall give a receipt therefor, and the clerk of the court shall make and retain a copy of such original will.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 91. When Will Not in Custody of Court, or Oral

If for any reason a written will is not in the custody of the court, or if the will is oral, the court shall find the contents thereof by written order, and certified copies of same as so established by the court may be recorded in other counties, and may be used in evidence, as in the case of certified copies of written wills in the custody of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 92. Period for Probate Does Not Affect Settlement

Where letters testamentary or of administration shall have once been granted, any person interested in the administration of the estate may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 93. Period for Contesting Probate

After a will has been admitted to probate, any interested person may institute suit in the proper court to contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to institute such contest.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 94. No Will Effectual Until Probated

Except as hereinafter provided with respect to foreign wills, no will shall be effectual for the pur-

pose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until such will has been admitted to probate. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

#### § 95. Probate of Foreign Will Accomplished by Filing and Recording

(a) **Foreign Will May Be Probated.** The written will of a testator who was not domiciled in Texas at the time of his death which would affect any real or personal property in this State, may be admitted to probate upon proof that it stands probated or established in any of the United States, its territories, the District of Columbia, or any foreign nation.

##### (b) Application and Citation.

###### (1) Will probated in domiciliary jurisdiction.

If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, the application need state only that probate is requested on the basis of the authenticated copy of the foreign proceedings in which the will was probated or established. No citation or notice is required.

###### (2) Will probated in non-domiciliary jurisdiction.

If a foreign will has been admitted to probate or established in any jurisdiction other than the domicile of the testator at the time of his death, the application for its probate shall contain all of the information required in an application for the probate of a domestic will, and shall also set out the name and address of each devisee and each person who will be entitled to a portion of the estate as an heir in the absence of a will. Citations shall be issued and served on each such devisee and heir by registered or certified mail.

(c) **Copy of Will and Proceedings To Be Filed.** A copy of the will and of the judgment, order, or decree by which it was admitted to probate or otherwise established, attested by the clerk of the court or by such other official as has custody of such will or is in charge of probate records, with the seal of the court affixed, if there is a seal, together with a certificate of the judge or presiding magistrate of such court that the said attestation is in due form, shall be filed with the application.

##### (d) Probate Accomplished by Recording.

###### (1) Will admitted in domiciliary jurisdiction.

If the will has been probated or established in the jurisdiction in which the testator was domiciled at the time of his death, it shall be the ministerial duty of the clerk to record such will and the evidence of its probate or establishment in the minutes of the court. No order of the court is necessary. When so filed and recorded, the will shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had

been probated by order of the court, subject to contest in the manner and to the extent hereinafter provided.

(2) **Will admitted in non-domiciliary jurisdiction.** If the will has been probated or established in another jurisdiction not the domicile of the testator, its probate in this State may be contested in the same manner as if the testator had been domiciled in this State at the time of his death. If no contest is filed, the clerk shall record such will and the evidence of its probate or establishment in the minutes of the court, and no order of the court shall be necessary. When so filed and recorded, it shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereafter provided.

(e) **Effect of Foreign Will on Local Property.** If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, such will, when probated as herein provided, shall be effectual to dispose of both real and personal property in this State irrespective of whether such will was executed with the formalities required by this Code.

(f) **Protection of Purchasers.** When a foreign will has been probated in this State in accordance with the procedure prescribed in this section for a will that has been admitted to probate in the domicile of the testator, and it is later proved in a proceeding brought for that purpose that the foreign jurisdiction in which the will was admitted to probate was not in fact the domicile of the testator, the probate in this State shall be set aside. If any person has purchased property from the personal representative or any legatee or devisee, in good faith and for value, or otherwise dealt with any of them in good faith, prior to the commencement of the proceeding, his title or rights shall not be affected by the fact that the probate in this State is subsequently set aside.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

#### § 96. Filing and Recording Foreign Will in Deed Records

When any will or testamentary instrument conveying or in any manner disposing of land in this State has been duly probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy thereof and of its probate which bears the attestation, seal and certificate required by the preceding Section, may be filed and recorded in the deed records in any county of this State in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded under the laws of this State, and without further proof or authentication; provided that the validity of such a will or testamentary

instrument filed under this Section may be contested in the manner and to the extent hereinafter provided.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 97. Proof Required for Recording in Deed Records

A copy of such foreign will or testamentary instrument, and of its probate attested as provided above, together with the certificate that said attestation is in due form, shall be prima facie evidence that said will or testamentary instrument has been duly admitted to probate, according to the laws of the state, territory, district, or country wherein it has allegedly been admitted to probate, and shall be sufficient to authorize the same to be recorded in the deed records in the proper county or counties in this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

#### § 98. Effect of Recording Copy of Will in Deed Records

Every such foreign will, or testamentary instrument, and the record of its probate, which shall be attested and proved, as hereinabove provided, and delivered to the county clerk of the proper county in this State to be recorded in the deed records, shall take effect and be valid and effectual as a deed of conveyance of all property in this State covered by said foreign will or testamentary instrument; and the record thereof shall have the same force and effect as the record of deeds or other conveyances of land from the time when such instrument is delivered to the clerk to be recorded, and from that time only.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

#### § 99. Recording in Deed Records Serves as Notice of Title

The record of any such foreign will, or testamentary instrument, and of its probate, duly attested and proved and filed for recording in the deed records of the proper county, shall be notice to all persons of the existence of such will or testamentary instrument, and of the title or titles conferred thereby.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

#### § 100. Contest of Foreign Wills

(a) **Will Admitted in Domiciliary Jurisdiction.** A foreign will that has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, and either admitted to probate in this State or filed in the deed records of any county of this State, may be contested by any interested person but only upon the following grounds:

(1) That the foreign proceedings were not authenticated in the manner required for ancillary probate or recording in the deed records.

(2) That the will has been finally rejected for probate in this State in another proceeding.

(3) That the probate of the will has been set aside in the jurisdiction in which the testator died domiciled.

**(b) Will Probated in Non-Domiciliary Jurisdiction.** A foreign will that has been admitted to probate or established in any jurisdiction other than that of the testator's domicile at the time of his death may be contested on any grounds that are the basis for the contest of a domestic will. If a will has been probated in this State in accordance with the procedure applicable for the probate of a will that has been admitted in the state of domicile, without the service of citation required for a will admitted in another jurisdiction that is not the domicile of the testator, and it is proved that the foreign jurisdiction in which the will was probated was not in fact the domicile of the testator, the probate in this State shall be set aside. If otherwise entitled, the will may be reprobated in accordance with the procedure prescribed for the probate of a will admitted in a non-domiciliary jurisdiction, or it may be admitted to original probate in this State in the same or a subsequent proceeding.

**(c) Time and Method.** A foreign will that has been admitted to ancillary probate in this State or filed in the deed records in this State may be contested by the same procedures, and within the same time limits, as wills admitted to probate in this State in original proceedings.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

**§ 101. Notice of Contest of Foreign Will**

Within the time permitted for the contest of a foreign will in this State, verified notice may be filed and recorded in the minutes of the court in this State in which the will was probated, or the deed records of any county in this State in which such will was recorded, that proceedings have been instituted to contest the will in the foreign jurisdiction where it was probated or established. Upon such filing and recording, the force and effect of the probate or recording of the will shall cease until verified proof is filed and recorded that the foreign proceedings have been terminated in favor of the will, or that such proceedings were never actually instituted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

**§ 102. Effect of Rejection of Will in Domiciliary Proceedings**

Final rejection of a will or other testamentary instrument from probate or establishment in the jurisdiction in which the testator was domiciled shall be conclusive in this State, except where the will or other testamentary instrument has been rejected solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State, in which case the will or testamentary instru-

ment may nevertheless be admitted to probate or continue to be effective in this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

**§ 103. Original Probate of Foreign Will in This State**

Original probate of the will of a testator who died domiciled outside this State which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate or establishment in the jurisdiction where the testator died domiciled, or if it stands rejected from probate or establishment in the jurisdiction where the testator died domiciled solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State. The court may delay passing on the application for probate of a foreign will pending the result of probate or establishment, or of a contest thereof, at the domicile of the testator.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 104. Proof of Foreign Will in Original Probate Proceeding**

If a testator dies domiciled outside this State, a copy of his will, authenticated in the manner required by this Code, shall be sufficient proof of the contents of the will to admit it to probate in an original proceeding in this State if no objection is made thereto. This Section does not authorize the probate of any will which would not otherwise be admissible to probate, or, in case objection is made to the will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required, except that the original will need not be produced unless the court so orders.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

**§ 105. Executors of Will Probated in Another Jurisdiction**

When a foreign will is admitted to ancillary probate in accordance with Section 95 of this Code, the executor named in such will shall be entitled to receive, upon application, letters testamentary upon proof that he has qualified as such in the jurisdiction in which the will was admitted to probate, and that he is not disqualified to serve as executor in this State. After such proof is made, the court shall enter an order directing that ancillary letters testamentary be issued to him. If letters of administration have previously been granted by such court in this State to any other person, such letters shall be revoked upon the application of the executor after personal service of citation upon the person to whom such letters were granted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

**§ 105A. Appointment and Service of Foreign Banks and Trust Companies in Fiduciary Capacity**

(a) Any bank or trust company organized under the laws of, and having its principal office in, the District of Columbia or any territory or state of the United States of America, other than the State of Texas, and any national bank having its principal office in the District of Columbia or such territory or other state (all such banks or trust companies being hereinafter sometimes called "foreign banks or trust companies"), having the corporate power to so act, may be appointed and may serve in the State of Texas as trustee (whether of a personal or corporate trust), executor, administrator, guardian of the estate, or in any other fiduciary capacity, whether the appointment be by will, deed, agreement, declaration, indenture, court order or decree, or otherwise, when and to the extent that the District of Columbia or territory or other state in which such foreign bank or trust company is organized and has its principal office grants authority to serve in like fiduciary capacity to a bank or trust company organized under the laws of, and having its principal office in, the State of Texas, or to a national bank having its principal office in the State of Texas.

(b) Before qualifying or serving in the State of Texas in any fiduciary capacity, as aforesaid, such a foreign bank or trust company shall file in the office of the Secretary of the State of the State of Texas (1) a copy of its charter, articles of incorporation or of association, and all amendments thereto, certified by its secretary under its corporate seal; (2) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Secretary of State and his successors its agent for service of process upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, fund or other matter within this state with respect to which such foreign bank or trust company is acting in any fiduciary capacity, including the acts or defaults of such foreign bank or trust company with respect to any such trust, estate or fund; and (3) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or other person to whom such notice or process shall be forwarded by the Secretary of State. Upon receipt of such notice or process, it shall be the duty of the Secretary of State forthwith to forward same by registered or certified mail to the officer, agent or other person so designated. Service of notice or process upon the Secretary of State as agent for such a foreign bank or trust company shall in all ways and for all purposes have the same effect as if personal service had been had within this state upon such foreign bank or trust company.

(c) No foreign bank or trust company shall establish or maintain any branch office, agency or other place of business within this state, or shall in any

way solicit, directly or indirectly, any fiduciary business in this state of the types embraced by subdivision (a) hereof. Except as authorized herein or as may otherwise be authorized by the laws of this state, no foreign bank or trust company shall act in a fiduciary capacity in this state. Nothing in this Section shall be construed to authorize foreign banks and trust companies to issue or to sell or otherwise market or distribute in this state any investment certificates, trust certificates, or other types of securities (including without limiting the generality of the foregoing any securities of the types authorized by Chapter 7 of the Insurance Code of 1951 prior to the repeal thereof), or to conduct any activities or exercise any powers of the type embraced and regulated by the Texas Banking Code of 1943 other than those conducted and exercised in a fiduciary capacity under the terms and conditions hereof.

(d) Any foreign bank or trust company acting in a fiduciary capacity in this state in strict accordance with the provisions of this Section shall not be deemed to be doing business in the State of Texas within the meaning of Article 8.01 of the Texas Business Corporation Act; shall be deemed qualified to serve in such capacity under the provisions of Section 105 of this Code; and shall not be prohibited by the provisions of Chapter 137, Acts of the 55th Legislature, Regular Session, 1957, amending Article 342-902 of the Texas Banking Code of 1943, from using in its name and stationery the terms "bank," "trust," or "bank and trust."

(e) The provisions hereof are in addition to, and not a limitation on, the provisions of Section 2 of Chapter 388, Acts of the 55th Legislature, Regular Session, 1957.

(f) Any foreign bank or trust Company which shall violate any provision of this Section 105a shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not exceeding Five Thousand Dollars (\$5,000.00), and may, in the discretion of the court, be prohibited from thereafter serving in this state in any fiduciary capacity.

[Acts 1961, 57th Leg., p. 46, ch. 31, § 1.]

**§ 106. When Foreign Executor to Give Bond**

A foreign executor shall not be required to give bond if the will appointing him so provides. If the will does not exempt him from giving bond, the provisions of this Code with respect to the bonds of domestic representatives shall be applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

**§ 107. Power of Sale of Foreign Executor or Trustee**

When by any foreign will recorded in the deed records of any county in this state in the manner provided herein, power is given an executor or trustee to sell any real or personal property situated in this state, no order of a court of this state shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and

whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this state, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 9, eff. June 12, 1969.]

### PART 3. ESTATES OF MINORS AND INCOMPETENTS

#### § 108. Laws Applicable to Guardianships

The provisions, rules, and regulations which govern estates of decedents shall apply to and govern guardianships, whenever the same are applicable and are not inconsistent with any provision of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 109. Persons Qualified to Serve as Guardians

(a) **Natural Guardians.** If the parents live together, the father is the natural guardian of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.

(b) **Guardians of Orphans.** These rules shall govern as to orphans who are minors:

(1) If the last surviving parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to guardianship of both the person and estate of such minor.

(2) If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.

(3) If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin. If there be two or more in the same degree, the guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.

(4) If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint a qualified person to be such guardian.

(c) **Guardians for Persons Other Than Minors.** If a person is an incompetent, or one for whom it is

necessary that a guardian be appointed to receive funds due from any governmental source, these rules shall govern:

(1) If such person has a spouse who is not disqualified, such spouse shall be entitled to the guardianship in preference to any other person.

(2) If there be no qualified spouse, the nearest of kin to such person, who is not disqualified, or in case of refusal by such spouse or nearest of kin to serve, then any other qualified person shall be entitled to the guardianship.

(3) Where two or more persons are equally entitled, the guardianship shall be given to one or the other, according to the circumstances, only the best interest of the ward being considered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1965, 59th Leg., p. 689, ch. 328, § 1.]

#### § 110. Persons Disqualified to Serve as Guardians

The following persons shall not be appointed guardians:

(a) Minors.

(b) Persons whose conduct is notoriously bad.

(c) Incompetents.

(d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.

(e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.

(f) Those who are unable to read and write the English language.

(g) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972.]

#### § 111. Application for Appointment of Permanent Guardian

A proceeding for the appointment of a guardian shall be begun by written application filed in the court of the county having venue thereof. Any person may make such application. Such application shall state:

(a) The name, sex, date of birth if a minor, and residence, of the person for whom the appointment of a guardian is sought; and

(b) If a minor, the names of the parents and next of kin of such persons, and whether either or both of the parents are deceased; and

(c) A general description of the property comprising such person's estate, if guardianship of the estate is sought; and

(d) The facts which require that a guardian be appointed; and

(e) The name, relationship, and address of the person whom the applicant desires to have appointed as guardian; and

(f) Whether guardianship of the person and estate, or of the person or of the estate, is sought; and

(g) Such other facts as show that the court has venue over the proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 112. Judge May Cause Application to be Filed

Whenever it comes to the knowledge of the county judge that any person whose legal domicile is in his county, or who is found therein, is a minor, a person of unsound mind, or an habitual drunkard, and is without a guardian of his person or of his estate within this State, and that there is probable cause for the exercise of his jurisdiction, he may cause proper proceedings to be commenced and application to be made as provided in the preceding Section for the appointment of a guardian of the person and of the estate of such person, or of either. Upon the filing of such application, process shall be issued and served as hereinafter provided.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 113. Contest of Proceedings

Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he deems beneficial to the ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 114. Facts Which Must Be Proved

Before appointing a guardian, the court must find:

(a) That the person for whom a guardian is to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds due such person from any governmental source. In the last case, a certificate of the executive head, or his representative, of the bureau, department, or agency of the government through which such funds are to be paid, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due such person, shall be prima facie evidence of the necessity for such appointment.

(b) That the court has venue of the case.

(c) That the person to be appointed guardian is not disqualified to act as such and is entitled to be appointed; or, in case no person who is entitled to appointment applies for it, that the

person appointed is a proper person to act as such guardian.

(d) That the rights of persons or property will be protected by the appointment of a guardian.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 115. Jury Trial Not Prerequisite

A jury trial, verdict, and judgment that a person is of unsound mind or an habitual drunkard shall not be prerequisite to an appropriate finding and adjudication by the court and appointment of a guardian for the person alleged to be of unsound mind or an habitual drunkard; nor shall it be necessary that such person be present at the trial.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 116. Only One Person to Be Appointed Guardian

Only one person can be appointed as guardian of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so; but nothing herein shall be held to prohibit the joint appointment of a husband and wife, or of co-guardians duly appointed under the laws of another state, territory, or country, or of the District of Columbia.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 117. Appointment of Guardian by Will

The surviving parent of a minor may, by will or written declaration, appoint any qualified person to be guardian of the person of his or her children after the death of such parent; and, if not disqualified, such person shall also be entitled to be appointed guardian of their estate after the death of such parent, upon compliance with the provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 118. Selection of Guardian by Minor

(a) **When No Other Guardian Has Been Appointed.** When an application has been filed for the guardianship of the person or estate, or of both, of a minor who has attained the age of fourteen years, such minor may, by writing filed with the clerk, make choice of the guardian, subject to the court's approval of such choice.

(b) **When Another Guardian Has Been Appointed.** A minor upon attaining the age of fourteen years may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns, or is removed from guardianship; and the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection shall be made in open court, in person or by attorney, by making application therefor.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 119. Failure of Guardian to Qualify**

If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead, upon application, but without further notice or citation.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 120. Term of Appointment of Guardian**

Unless sooner discharged according to law, a guardian remains in office until the estate is closed in accordance with the provisions of this Code, as hereinafter set out.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 121. Removal of Guardianship to Another County May Be Had**

**(a) Application for Removal of Guardianship.**

When a guardian, or any other person, desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking authority to do so, and shall state in such application his reason for desiring such removal.

**(b) Sureties on Bond to Be Cited.** Upon the filing of such application, the sureties upon the bond of such guardian shall be cited by personal service to appear and show cause why such application should not be granted.

**(c) When Guardian Shall Be Cited.** If the application for removal is filed by any person other than the guardian, the guardian also shall be cited by personal service to appear and show cause why such application should not be granted.

**(d) Action of the Court.** Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the best interest of the ward, the court shall enter an order authorizing such removal upon the payment on behalf of the estate of all costs that have accrued.

**(e) Transcript of Record.** When such order of removal has been made, the clerk shall record all papers of the guardianship required to be recorded that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments, and proceedings in such guardianship; and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been ordered removed.

**(f) When Removal Shall Become Effective.** The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of such fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 122. Continuation of Guardianship**

When a guardianship has been removed from one county to another in accordance with the foregoing provisions of this Code, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 123. New Guardian May Be Appointed Upon Removal**

If it appears to the court that the removal of the guardianship would be to the best interest of the ward, but that, by virtue of such removal, it will be unduly expensive to the estate, or unduly inconvenient, for the guardian of the estate to continue to serve in such capacity, the court may in its order of removal, revoke the letters of guardianship and appoint a new guardian. In such event, the former guardian shall account for and deliver the estate as is provided in this Code in cases where guardians resign.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 124. Nonresidents, Appointment of Guardians for**

**(a) Appointment of Non-Resident Guardian**

A non-resident or non-residents of Texas, being natural persons or corporations, resident of another state or of the District of Columbia, or of any territory, or of any other nation or country, may be appointed and qualified as guardian, or co-guardian of his or its or their non-resident ward's estate situated in Texas in the same manner and by the same procedure provided in this Code for the appointment and qualification of a resident of this State as guardian of the estates of minors, persons of unsound mind, or habitual drunkards; provided that, by proceedings in and decree or decrees of a court of competent jurisdiction in another state, the District of Columbia, a territory, or another nation or country, of his or its or their residence, such non-resident applicant or applicants shall have been previously duly appointed and are still qualified as guardian, co-guardians, tutor, curator, committee, or fiduciary legal representative by whatever name known in such foreign jurisdiction, of the property or estate of his or its or their ward situated within the jurisdiction of such foreign court, whether such ward be a minor, a person of unsound mind, or an habitual drunkard; and provided further that, with his or its or their written application for appointment in the county court of any county in this state where all or part of such ward's estate is situated in this state, such non-resident applicant or applicants file also a full and complete transcript of the proceedings from the records of the court in which he or it or they were appointed in the jurisdiction of his or its or their residence, evidencing his or its or their due appointment and qualification as such guardian,

co-guardians, tutor, curator, committee, or other fiduciary legal representative, of his or its or their ward's property or estate, which transcript shall be certified to and attested by the clerk of such foreign court, if there be a clerk, and, if there be no clerk, then by the officer of said court charged by law with the custody of the records thereof, under the seal of such court, if there be a seal, to which transcript shall be attached the certificate of the judge, chief justice or presiding magistrate, as the case may be, of such foreign court to the effect that the said attestation of such transcript by the clerk or legal custodian of the court records is in due form; and provided further that, without the necessity of notice or citation of any character, an order of appointment be made and entered and that such non-resident applicant or applicants thus appointed, qualify by making and filing oath and bond, subject to the court's approval in all respects the same as required of residents thus appointed, and file with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, whereupon the clerk shall issue the letters of guardianship to such non-resident guardian or co-guardians. Guardians so qualified shall file inventory and appraisal of the estate of the ward in this State subject to the jurisdiction of the court, as in ordinary cases, and shall be subject to and controlled by all applicable provisions of this Code with respect to the handling and settlement of estates by domestic guardians.

#### (b) Domestic Guardian of Non-Resident

When a non-resident minor or incompetent owns property in this State, guardianship of such estate may be granted when it is made to appear that a necessity exists therefor, in like manner as if such minor or incompetent resided in this State. The court making the grant of such guardianship shall be in the county in which the principal estate of the ward is situated, and said court shall take all such action and make all such orders with respect to the estate of the ward, for the maintenance, support and care, or the education, if necessary, of the ward, out of the proceeds of such ward's estate, in like manner as if the ward were a resident of this State, and guardianship of the person and estate of the ward had been granted by said court, and the ward had been sent abroad by the court for education or treatment. In the event there be a qualified non-resident guardian of such estate, who later desires to qualify in this State, as hereinabove set out, such non-resident guardian may do so, and it shall be grounds for closing the resident guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 3.]

#### § 125. Validation of Certain Letters of Guardianship Heretofore Issued

All present existing letters of guardianship heretofore issued to non-resident guardians with or without the procedure, in whole or in part, and with or without notices and citations required in cases of

resident guardians, are hereby validated as of their respective dates, in so far as the absence of such procedure, notices, and citations are concerned, as are also all otherwise valid conveyances, mineral leases, and other acts of such guardians so qualified and acting in connection therewith under supporting orders of county and probate courts of this state; provided, however, that this provision shall not be applicable to any letters, conveyance, lease, or other act of such guardian which is involved in any lawsuit pending in this state on the effective date of this Code wherein the absence of such procedure or of such notices or citations is an issue.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 126. Removal of Ward's Property from the State

Upon the recovery of the property of the ward, if it be personal property, any non-resident guardian, whether qualified under provisions of this Code or not, may remove the same out of the state, unless such removal would conflict with the tenure of such property, or with the terms and limitations under which it is held; but there shall be no removal from the state of any of such property until all debts known to exist against the estate in this state have been paid, or until the payment of such debts has been secured by bond payable to and approved by the judge of the court in which the proceedings are pending in this state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 127. Delivery of Property

Any resident executor, administrator, or guardian, having any of the estate of a ward, may be ordered by the court to deliver the same to a duly qualified and acting non-resident guardian of such ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### PART 4. CITATIONS AND NOTICES

#### § 128. Citations With Respect to Applications for Probate or for Issuance of Letters

(a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration. When an application for the probate of a written will produced in court, or for letters of administration, is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

- (1) That such application has been filed, and the nature of it.
- (2) The name of the deceased and of the applicant.
- (3) The time when such application will be acted upon.
- (4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

**(b) Where Application Is for Probate of a Written Will Not Produced or of a Nuncupative Will.**

When the application is for the probate of a nuncupative will, or of a written will which cannot be produced in court, the clerk shall issue a citation to all parties interested in such estate, which citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon. If the heirs of the testator be residents of this state, and their residence be known, the citation shall be served upon them by personal service. Service of such citation may be made by publication in the following cases:

- (1) When the heirs are non-residents of this state; or
- (2) When their names or their residences are unknown; or
- (3) When they are transient persons.

**(c) No Action Until Service Is Had.** No application for the probate of a will or for the issuance of letters shall be acted upon until service of citation has been made in the manner provided herein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 129. Validation of Prior Modes of Service of Citation**

(a) In all cases where written wills produced in court have been probated prior to June 14, 1927, after publication of citation as provided by the then Article 28 of the Revised Civil Statutes of Texas (1925), without service of citation, the action of the courts in admitting said wills to probate is hereby validated in so far as service of citation is concerned.

(b) In all cases where written wills produced in court have been probated or letters of administration have been granted prior to May 18, 1939, after citation, as provided by the then Article 3334, Title 54, of the Revised Civil Statutes of Texas (1925), without service of citation as provided for in the then Article 3336, Title 54, of the Revised Civil Statutes of Texas (1925) as amended by Acts 1935, 44th Legislature, page 659, Chapter 273, Section 1, such service of citation and the action of the court in admitting said wills to probate and granting administration upon estates, are hereby validated in so far as service of citation is concerned.

(c) In all cases where written wills have been probated or letters of administration granted, prior to June 12, 1941, upon citation or notice duly issued by the clerk in conformance with the requirements of the then Article 3333 of Title 54 of the Revised Civil Statutes of Texas (1925), as amended, but not directed to the sheriff or any constable of the county wherein the proceeding was pending, and such citation or notice having been duly posted by the sheriff or any constable of said county and returned for or in the time, manner, and form required by law, such citation or notice and return thereof and the action of the court in admitting said wills to probate or

granting letters of administration upon estates, are hereby validated in so far as said citation or notice, and the issuance, service and return thereof are concerned.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 130. Notice and Citation, Estates of Minors and Incompetents**

**(a) When Notice Issued.** Upon the filing of an application for appointment of a guardian, the clerk shall issue a notice setting forth that such application has been filed for the guardianship of the person or estate, or both, as the case may be, of the person for whom such guardian is sought, naming such person, and stating the nature of the disability, and by whom the application is made; which notice shall cite all persons interested in the welfare of such person to appear at the time and place stated therein, and contest such application, if they so desire.

**(b) Service of Notice.** The notice shall be served by posting, and the sheriff or other officer posting the same shall return the original, signed officially, stating thereon in writing the time and place when and where he posted said copy.

**(c) Service of Citation.** Except as hereinafter provided, minors who have attained the age of fourteen years, persons alleged to be of unsound mind or habitual drunkards, and persons for whom it is alleged to be necessary to have a guardian appointed to receive funds from any governmental source or agency shall be personally served with citation to appear and answer the application for the appointment of a guardian.

**(d) When Service of Citation Not Required.** Minors who have attained the age of fourteen years may, in person or by attorney, by writing filed with the clerk, waive the issuance and personal service of such citation. No citation need be issued or served if it is represented under oath in the application that, within six months prior to filing such application, the person for whom or for whose estate such guardian is sought has been adjudged by a court of competent jurisdiction in this State, after due notice, to be a person of unsound mind or an habitual drunkard.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION AND GUARDIANSHIP**

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PART 1. TEMPORARY ADMINISTRATION IN  
THE INTEREST OF (A) ESTATES OF  
DECEDENTS, AND (B) PERSONS OR ES-  
TATES OF MINORS AND INCOMPETENTS

§ 131. Procedure

(a) **Necessity of Appointment.** Whenever it appears to the county judge that the interest of a decedent's estate, or the interest of any minor, person of unsound mind, or common or habitual drunkard, and his or her estate, or either of them, requires immediate appointment of a personal representative, he shall, by written order, appoint a suitable temporary representative, with such limited powers as the

circumstances of the case require, and such appointment may be made permanent, as herein provided.

(b) **Manner of Appointment.** Such appointment may be made with or without written application and without notice or citation. The order shall designate the appointee appropriately, as "temporary administrator" of the decedent's estate, or as "temporary guardian" of the person or of the estate, or both, of such minor, person of unsound mind, or common or habitual drunkard, fix the bond to be given and define the powers conferred on the appointee. When any such appointee has taken and filed his oath and filed with the county clerk a bond approved by the court, the clerk shall issue to the appointee letters which shall set forth the powers to be exercised by the appointee.

(c) **Perpetuation of Appointment.** The order making the appointment shall state that, unless the same is contested after service of citation, it shall be continued in force for such period of time as the court shall deem in the interest of the estate or person involved, or it shall be made permanent, if found by the court to be necessary.

(d) **Citation Relative to Perpetuation.** Immediately after such appointment the clerk shall issue and cause to be posted a notice, and if necessary issue citations, to all interested persons to appear at the time stated in such writ and contest said appointment if they so desire; and such notice or citation shall state that, if no contest is made, the appointment will be continued for such time as appears to the interest of the estate or person involved, or that, if found necessary by the court, it shall be made permanent.

(e) **Contest.** If the appointment is contested, the court shall hear and determine the same, and, during the pendency of such contest, the temporary appointee shall continue to act as such. If the appointment is set aside, the court shall require the appointee to prepare and file, under oath, a complete exhibit of the condition of the estate which has come into his possession, and show what disposition he has made of the same or any portion thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 132. Temporary Administration Pending Contest  
of a Will or Administration

(a) **Appointment of Temporary Administrator.** Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers.

(b) **Additional Powers Relative to Claims.** When temporary administration has been granted pending a will contest, or pending a contest on an application for letters of administration, the court may, at any time during the pendency of the contest, confer upon the temporary administrator all the power and au-

thority of a permanent administrator with respect to claims against the estate, and in such case the court and the temporary administrator shall act in the same manner as in permanent administration in connection with such matters as the approval or disapproval of claims, the payment of claims, and the making of sales of real or personal property for the payment of claims; provided, however, that in the event such power and authority is conferred upon a temporary administrator, he shall be required to give bond in the full amount required of a permanent administrator. The provisions of this Subsection are cumulative and shall not be construed to exclude the right of the court to order a temporary administrator to do any and all of the things covered by this Subsection in other cases where the doing of such things shall be necessary or expedient to preserve the estate pending final determination of the contest.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 133. Powers of Temporary Appointees

(a) **Temporary Administrators.** Temporary administrators shall have and exercise only such rights and powers as are specifically expressed in the order of the court appointing them, and as may be expressed in subsequent orders of the court. Where a court, by a subsequent order, extends the rights and powers of a temporary administrator, it may require additional bond commensurate with such extension. Any acts performed by temporary administrators that are not so expressly authorized shall be void.

(b) **Temporary Guardianships.** All the provisions of this Code relating to the guardianship of persons and estates of minors, persons of unsound mind, and habitual drunkards shall apply to temporary guardianship of the persons and estates of such persons, in so far as the same are applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 134. Accounting

At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate which has come into his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such appointee.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 135. Closing Temporary Administration or Guardianship

The list, return, exhibit, and account so filed shall be acted upon by the court and, whenever temporary letters shall expire or cease to be of effect for any cause, the court shall immediately enter an order requiring such temporary appointee forthwith to deliver the estate remaining in his possession to the person or persons legally entitled to its possession. Upon proof of such delivery, the appointee shall be discharged and the sureties on his bond released as to any future liability.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 2. RECEIVERSHIP FOR MINORS AND INCOMPETENTS

### § 136. Receivership

(a) **Appointment of Receiver.** When from any cause the estate of a minor or an incompetent, or any portion thereof, appears in danger of injury, loss, or waste, and in need of a representative, there being no guardian of such estate qualified in this state and no necessity for one, the county judge of the county where such minor or incompetent resides, or where the endangered estate is situated, shall by order, with or without application, appoint a suitable person as receiver to take charge of such endangered estate, requiring bond of such person as in ordinary receiverships in such sum as the judge deems necessary to protect the estate, and specifying such duties and powers of the receiver as the judge deems necessary for the protection, conservation, and preservation of the estate. The clerk shall forthwith enter such order upon the minutes of the court; and the person so appointed shall forthwith make his bond, submit same to the judge for approval, file same, when approved, with the clerk, and proceed to take charge of such endangered estate pursuant to the duties and powers vested in him by the order of appointment and by such subsequent orders as the judge shall make from time to time.

(b) **Expenditures by the Receiver.** Whenever, during the pendency of such receivership, the needs of the minor or incompetent shall require the use of the income or corpus of the estate for the education, clothing, or subsistence of the minor or incompetent, the judge shall, with or without application, by order entered upon the minutes of his court, appropriate an amount of such income or corpus sufficient for such purpose; and the same shall be used by the receiver to pay such claims for such education, clothing, or subsistence as are presented to the judge and approved and ordered by him to be paid.

(c) **Investments, Loans and Contributions by the Receiver.** Whenever, during the pendency of such receivership, the receiver shall have on hand an amount of money belonging to such minor or incompetent in excess of the amount needed for current necessities and expenses, he may, under direction of the judge, invest, lend, or contribute such excess money or any portion or portions thereof in the manner, for the security, and on the terms and conditions provided in this Code for investments, loans, or contributions by guardians, and he shall report to the judge all such transactions in the manner that reports are required of guardians.

(d) **Receiver's Expenses, Account, and Compensation.** All necessary expenses incurred by the receiver in administering the estate may be rendered monthly to the judge in the form of a sworn statement of account, including a report of the receiver's acts, the condition of the estate, the status of the threatened danger to the estate, and the progress made toward abatement of such danger. If the judge is satisfied that such statement is correct and

reasonable in all respects, he shall promptly enter his order approving the same and authorizing the receiver to reimburse himself out of the funds of the estate in his hands. For his official services rendered, the receiver shall be compensated in the same manner and amount as provided by this Code for similar services rendered by guardians of estates.

(e) **Closing Receivership.** When the threatened danger has abated and the estate is no longer liable to injury, loss, or waste for want of a representative, the receiver shall so report to the judge, filing with the clerk a full and final sworn account of all estate received into his hands, all sums paid out, all acts performed by him with respect to such estate, and all estate remaining in his hands; whereupon the clerk shall issue and cause to be posted a notice to all persons interested in the welfare of such minor or incompetent, and shall give personal notice to the person having custody of such minor or incompetent, to appear before the judge at a time and place specified in such notices and contest such report and account if they so desire.

(f) **Action of the Judge.** If upon hearing such report and account, the judge is satisfied that the danger of injury, loss, or waste has abated and that said report and account are correct, he shall enter an order so finding and shall direct the receiver to deliver said estate to the person from whom he took possession as receiver, or to the person having custody of the minor or incompetent, or to such other person as the judge may find to be entitled to possession of the estate, which person in turn shall execute and file with the clerk an appropriate receipt for the estate thus delivered. The order of the judge shall discharge the receiver and his sureties. If the judge is not satisfied that the danger has abated, or if he is not satisfied with the report and account, he shall enter an order continuing the receivership in effect until he is so satisfied.

(g) **Recordation of Proceedings.** All orders, bonds, reports, accounts, and notices in the receivership proceedings shall be recorded in the minutes of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### PART 3. SMALL ESTATES

#### § 137. Collection of Small Estates Upon Affidavit

The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(a) No petition for the appointment of a personal representative is pending or has been granted; and

(b) Thirty days have elapsed since the death of the decedent; and

(c) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed Two Thousand Five Hundred Dollars; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by such distributees as have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be approved by the judge of the court having jurisdiction and venue, to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.

Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 4, eff. Aug. 23, 1957; Acts 1969, 61st Leg., p. 1978, ch. 670, § 1, eff. Sept. 1, 1969.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to subsections (d) and (e) of this section.*

#### § 138. Effect of Affidavit

The person making payment, delivery, transfer or issuance pursuant to the affidavit described in the preceding Section shall be released to the same extent as if made to a personal representative of the decedent, and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. In addition, the person or persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery,

transfer, or issuance made in reliance on such affidavit. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided, such property may be recovered in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 139. Application for Order of No Administration

If the value of the entire assets of an estate, not including homestead and exempt property, does not exceed the amount to which the surviving spouse and minor children of the decedent are entitled as a family allowance, there may be filed by or on behalf of the surviving spouse or minor children an application in any court of proper venue for administration, or, if an application for the appointment of a personal representative has been filed but not yet granted, then in the court where such application has been filed, requesting the court to make a family allowance and to enter an order that no administration shall be necessary. The application shall state the names of the heirs or devisees, a list of creditors of the estate together with the amounts of the claims so far as the same are known, and a description of all real and personal property belonging to the estate, together with the estimated value thereof according to the best knowledge and information of the applicant, and the liens and encumbrances thereon, with a prayer that the court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, the same be set aside to the surviving spouse and minor children, as in the case of other family allowances provided for by this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 140. Hearing and Order Upon the Application

Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, shall order that no administration be had of the estate and shall assign to the surviving spouse and minor children the whole of the estate, in the same manner and with the same effect as provided in this Code for the making of family allowances to the surviving spouse and minor children.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 141. Effect of Order

The order that no administration be had on the estate shall constitute sufficient legal authority to

all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration, and the persons so described in the order shall be entitled to enforce their right to such payment or transfer by suit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 142. Proceeding to Revoke Order

At any time within one year after the entry of an order of no administration, and not thereafter, any interested person may file an application to revoke the same, alleging that other property has been discovered, or that property belonging to the estate was not included in the application for no administration, or that the property described in the application was incorrectly valued, and that if said property were added, included, or correctly valued, as the case may be, the total value of the property would exceed that necessary to justify the court in ordering no administration. Upon proof of any of such grounds, the court shall revoke the order of no administration. In case of any contest as to the value of any property, the court may appoint two appraisers to appraise the same in accordance with the procedure hereinafter provided for inventories and appraisements, and the appraisal of such appraisers shall be received in evidence but shall not be conclusive.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 143. Summary Proceedings for Small Estates After Personal Representative Appointed

Whenever, after the inventory, appraisal, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 144. Payment of Small Claims Without Guardianship

(a) **To Residents.** Whenever a resident minor, or whenever a resident person legally adjudged to be of

unsound mind or to be an habitual or common drunkard sometimes referred to in this Section as "creditor," being without a legal guardian of his person or estate, shall be entitled to money in an amount not exceeding One Thousand Five Hundred Dollars, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay same to the County Clerk of the county in which such creditor resides in this state, for the account of such creditor, giving his name, the nature of his disability, and if a minor his age, and his post-office address, and the receipt for such money signed by the clerk shall be forever binding on such creditor as of the date and to the extent of such payment. Upon receipt of such payment by the clerk, he shall forthwith call same to the attention of the court and shall invest such money as authorized by the Probate Code pursuant to the orders of the court in the name and for the account of such minor or other person entitled to same, and by letter mailed to the address given by the debtor, shall apprise such creditor of the fact that such deposit has been made. Any increase, dividend or income from such investments shall be credited to the account of such minor or other person entitled to such investment. Any money heretofore deposited under the terms of this section which has not been paid out shall within thirty (30) days after the effective date of this Act be subject to the provisions of this Act as amended.

Within sixty (60) days from the first day of each calendar year the clerk of the court shall make a report to the court in writing of the status of such investments. Such report shall contain the following:

- (1) The amount of the original investment or the amount of the investment at the last annual report, whichever is later.
- (2) Any increase, dividend or income from such investment since the last annual report.
- (3) The total amount of the investment and all increases, dividends or income at the date of the report.
- (4) The name of the depository or the type of investment.

The father or mother or unestranged spouse of such creditor, priority being given to such spouse, residing in this state or if there be no such spouse and both father and mother be dead or nonresidents of this state, then the person residing in this state who has actual custody of such creditor, may as custodian, upon filing with such clerk written application and bond approved by the County Judge of such county, withdraw such money from the clerk for the use and benefit of such creditor, such bond to be in double the amount of said money and to be payable to the judge or his successors in office and to be conditioned that such custodian will use said money for the benefit of such creditor under directions of the court and that he will, when legally called upon to do so, faithfully account to such creditor, his heirs or legal representatives for such money and any increase thereof upon removal of the

disability to which such creditor is subject, or upon his death or the appointment of a guardian. No fees or commissions shall be allowed to such custodian for taking care of, handling or expending such money so withdrawn by him.

When such custodian shall have expended such money in accordance with directions of the court or shall have otherwise complied with the terms of his bond by accounting for said money and any increase, he shall file with the County Clerk of said county his sworn report of his accounting, the filing of which report, when approved by the court shall operate as a discharge of said person as custodian and his sureties from all further liability under said bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

**(b) To Non-Resident.** Whenever a non-resident minor or whenever a non-resident person duly adjudged by a court of competent jurisdiction to be of unsound mind or to be an habitual drunkard, having no legal guardian qualified in this state, is entitled to money in an amount, not exceeding Three Thousand Dollars owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay such money to the guardian of such creditor duly qualified in his domiciliary jurisdiction or to the county clerk of any county in this state in which real property owned by such non-resident person is situated. If such person is not known to own any real property in any county in this state such debtor shall have the right to pay such money to the county clerk of the county of this state in which the debtor resides. In either case, such payment to the clerk shall be for the use and benefit and for the account of such non-resident creditor, and the receipt for such payment signed by the clerk, reciting the name of such creditor and his post-office address, if known, shall be forever binding against such creditor as of the date and to the extent of such payment. Such money so paid to such clerk shall be handled by him in the same manner as above provided for in cases of payments to the clerk for the accounts of residents of this state, and all applicable provisions of Subsection (a) above shall apply to the handling and disposition of money or any increase, dividend, or income herefrom so paid to the clerk for the use, benefit, and account of such non-resident creditor.

**(c) When the Deposit Is Not Withdrawn by Another Person.** If no person authorized hereunder withdraws such money from the clerk as provided for in this Section, then the creditor himself, after termination of his disability, or his subsequent personal representatives or heirs, as the case may be, may at any time, without special bond for the purpose, withdraw such money upon simply exhibiting to the clerk an order of the county or probate court of the county where such money is held by the clerk, directing the clerk to deliver such money to such creditor or to his personal representative or heirs named in such order, the identity of such persons

and their credentials being first proved to the satisfaction of the court.

(d) **Money in the Registry of a Court and Belonging to an Inmate of a State Eleemosynary Institution.** Whenever it is made to appear to the judge of a county court, district court, or other court of the State of Texas, by an affidavit executed by the superintendent, business manager or field representative of any eleemosynary institution of the State of Texas, that a certain inmate therein is a lunatic, idiot, person of unsound mind or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, and there is no known legal guardian appointed for the estate of such inmate, and that there is on deposit in the registry of the court a certain sum of money belonging to the inmate and not exceeding the sum of One Thousand Dollars (\$1,000), the judge of the court may order the disposition of the funds as herein provided. The judge of the court, upon satisfactory proof by affidavit or otherwise, that the inmate is a lunatic, idiot, person of unsound mind, or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, without a legally appointed guardian of his estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The State institution to which the payment is made shall not be required to give bond or security for receiving the fund from the registry of the court, and the receipt from the State institution for such payment, or the cancelled check or warrant by which the payment was made, shall be sufficient evidence of the disposition thereof and the clerk of the court shall be relieved of further responsibility therefor. Upon receipt of the money the institution shall deposit all of the amount received to the trust account of the inmate, to be used by or for the personal use of the owner thereof under the regulations or custom of the institution in the expenditure of such funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. The provisions of this subdivision shall be cumulative of all other laws affecting the rights of lunatics, idiots, persons of unsound mind or of mental illness, and moneys belonging to such persons as inmates of a state eleemosynary institution.

Should such inmate become deceased leaving a balance in his trust account, such balance may be applied on the burial expenses of said inmate, or applied on his care, support and treatment account at said institution. After the expenditure of all funds in such trust account or after the death of such inmate the responsible officer shall furnish a statement of expenditures of such funds to nearest relative entitled to such statement; and, a copy of such statement shall be filed with the court which

first granted the order to dispose of the funds in accordance with the provisions of this Act.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 1304, ch. 437, § 1, eff. June 6, 1957; Acts 1969, 61st Leg., p. 1973, ch. 671, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2993, ch. 988, § 5, eff. June 15, 1971.]

#### PART 4. INDEPENDENT ADMINISTRATION

##### § 145. Independent Administration

Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisal, and list of claims of his estate. When such will has been probated, and the inventory, appraisal, and list aforesaid has been filed by the executor and approved by the court, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the court except where this Code specifically and explicitly provides for some action in the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 2(b).]

##### § 146. Payment of Claims and Delivery of Exemptions and Allowances

An independent executor, in his administration of an estate, although free from the control of the court, shall nevertheless, independently of and without application to, or any action in or by the court, receive presentation of and classify, allow, and pay, or reject, claims against the estate in the same order of priority, classification, and proration prescribed in this Code, and set aside and deliver to those entitled thereto exempt property and allowances for support, and in lieu of homestead, as prescribed in this Code, to the same extent and result as if his actions had been accomplished in, and under orders of, the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 2(c).]

##### § 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the testator in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after one year from the date of the probate of the will appointing him.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 148. Requiring Heirs to Give Bond

When it is provided in a will that no action shall be had in court in relation to the settlement of the estate, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by written complaint

filed in the court where such will was probated, cause all heirs at law and other persons entitled to any portion of such estate under the will to be cited by personal service to appear before such court and execute a bond for an amount equal to the full value of such estate, as shown by the inventory and list of claims, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the court, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 149. Requiring Independent Executor to Give Bond

When it has been provided by will, regularly probated, that an independent executor appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such independent executor is mismanaging the property, or has betrayed or is about to betray his trust, or has in some other way become disqualified, in which case, upon proper proceedings had for that purpose, as in the case of executors or administrators acting under orders of the court, such executor may be required to give bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 149A. Accounting

(a) **Interested Person May Demand Accounting.** At any time after the expiration of fifteen months from the date a will appointing an independent executor is admitted to probate, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining in his hands.

6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.

7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

Any other interested person shall, upon demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) **Enforcement of Demand.** Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court or by a suit in the district court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

(c) **Subsequent Demands.** After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than twelve months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) **Remedies Cumulative.** The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor thereof.

[Acts 1971, 62nd Leg., p. 980, ch. 173, § 10, eff. Jan. 1, 1972; Acts 1973, 63rd Leg., p. 412, ch. 184, § 1, eff. May 25, 1973.]

#### § 150. Partition and Distribution

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the independent executor may file his final account in the court in which the will was probated, and ask for partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 151. Closing Independent Administration by Affidavit

(a) **Filing of Affidavit.** When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a final account verified by affidavit. Such account shall show:

- (1) The property of the estate which came into the hands of the independent executor; and
- (2) The debts that have been paid; and

(3) The debts, if any, still owing by the estate; and

(4) The property of the estate, if any, remaining on hand after payment of debts; and

(5) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

**(b) Effect of Filing the Affidavit.** The filing of such an affidavit shall terminate the independent administration and the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the affidavit. When such an affidavit has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of such distributees with respect to such properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in such affidavit. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 152. Closing Independent Administration Upon Application by Distributee

At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any distributee may file an application to close the administration; and, after citation upon the independent executor, and upon hearing, the court may enter an order closing the administration and terminating the power of the independent executor to act as such.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 153. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in the preceding Sections, the clerk shall issue such number of letters testamentary as the independent executor shall request.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 154. Powers of an Administrator Who Succeeds an Independent Executor

**(a) Grant of Powers by Court.** Whenever a person has died, or shall die, testate, owning property in Texas, and such person's will has been or shall be admitted to probate by the proper court, and such probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of said will, and such will grants to such independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an

administrator with the will annexed is appointed by the court having jurisdiction of the estate, and an administrator's bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred upon such administrator under other provisions of the laws of Texas, authorize, direct, and empower such administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent portions of this Section.

**(b) Power to Borrow Money and Mortgage or Pledge Property.** The court, upon application, citation, and hearing, may, by its order, authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, upon application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage upon property or assets of the estate, real, personal, or mixed, upon such terms and conditions, and for such duration of time, as the court shall deem to be to the best interest of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in his official capacity.

**(c) Powers Limited to Those Granted by the Will.** The court may order and authorize such administrator to have and exercise the powers and privileges set forth in the preceding Subsections hereof only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing such administrator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the court, for such administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

**(d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property.** The court, in addition, may, upon application, citation, and hearing, order, authorize and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be to

the best interest of the estate and shall, from time to time, order and direct.

(e) **Application for Grant of Powers.** The granting to such administrator by the court of some, or all, of the powers and authorities set forth in this Section shall be upon application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) **Citation.** Upon the filing of such application, the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Such citation shall be served by posting.

(g) **Hearing and Order.** The court shall hear such application and evidence thereon, upon the return day named in the citation, or thereafter, and, if satisfied a necessity exists and that it would be to the best interest of the estate to grant said application in whole or in part, the court shall so order; otherwise, the court shall refuse said application. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

### § 155. Administration of Community Property

When a husband or wife dies intestate and the community property passes to the survivor, no administration thereon, community or otherwise, shall be necessary.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

### § 156. Liability of Community Property for Debts

The community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death. In addition, the interest that the deceased spouse owned in any other nonexempt community property passes to his or her heirs or devisees charged with the debts which were enforceable against such deceased spouse prior to his or her death. In the administration of community estates, the survivor or personal representative shall keep a separate, distinct account of all community debts allowed or paid in the administration and settlement of such estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

### § 157. When Spouse Incompetent

Whenever a husband or wife is judicially declared to be incompetent, the other spouse, in the capacity of surviving partner of the marital partnership, thereupon acquires full power to manage, control, and dispose of the entire community estate, including the part which the incompetent spouse would

legally have power to manage in the absence of such incompetency, and no administration, community or otherwise, shall be necessary. Guardianship of the estate of the incompetent spouse shall not be necessary when the other spouse is competent unless the incompetent spouse owns separate property, and then as to such separate property only. The qualification of a guardian of the estate of an incompetent spouse does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 5.]

### § 158. Duty of Guardians

A guardian of the estate of an incompetent married person who, as guardian, is administering community property as part of the estate of such ward, shall forthwith deliver such community property to the sane spouse upon demand.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 159. Recovery of Competency

The special powers of management, control, and disposition vested in the sane spouse by this Code shall terminate whenever the decree of a court of competent jurisdiction finds that the mental competency of the other spouse has been recovered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 160. Powers of Surviving Spouse When No Administration Is Pending

When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, whether the husband or wife, as the surviving partner of the marital partnership, without qualifying as community administrator as hereinafter provided, has power to sue and be sued for the recovery of community property; to sell, mortgage, lease, and otherwise dispose of community property for the purpose of paying community debts; to collect claims due to the community estate; and has such other powers as shall be necessary to preserve the community property, discharge community obligations, and wind up community affairs.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 161. Community Administration

Whenever an interest in community property passes to someone other than the surviving spouse, the surviving spouse may qualify as community administrator in the manner hereinafter provided if

(a) The deceased spouse failed to name an executor in his will, or

(b) If the executor named in the will of the deceased spouse is for any reason unable or unwilling to qualify as such, or

(c) If the deceased spouse died intestate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

**§ 162. Application for Community Administration**

A surviving spouse who desires to qualify as a community administrator shall, within four years after the death of the other spouse, file a written application in the court having venue over the estate of the deceased spouse, stating:

- (a) That the other spouse is dead, setting forth the time and place of such death; and
- (b) The name and residence of each person to whom an interest in community property has passed by the will of the decedent or by intestacy; and
- (c) That there is a community estate between the deceased spouse and the applicant, and the facts that authorize the applicant to be appointed as community administrator; and
- (d) That, by virtue of facts set forth in the application, the court has venue over the estate of the deceased spouse; and
- (e) If the applicant desires that appraisers be appointed, that not less than one nor more than three appraisers should be appointed to appraise such estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

**§ 163. Appointment of Appraisers**

If the appointment of appraisers is requested by the applicant, or by any interested person, the judge shall, without notice or citation, enter an order appointing appraisers to appraise such estate as in other administrations.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

**§ 164. Inventory, Appraisal, and List of Claims**

The surviving spouse, with the assistance of the appraisers, if any be appointed, shall make out a full, fair, and complete inventory, appraisal, and list of claims of the community estate as in other administrations, shall attach thereto a list of all indebtedness owing by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is owing, and his or their postoffice address, and shall return same to the court within ninety (90) days after the date of the order appointing appraisers, if any be appointed, unless a longer time shall be granted by the court. If no appraisers be appointed, such return shall be made within ninety (90) days after the date of the application for community administration, unless a longer time shall be granted by the court. In either event, the court may, for good cause shown, require the filing of the inventory and appraisal within a shorter period of time. Such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said surviving spouse, and said inventory, appraisal, and list of claims owing said community estate shall be sworn to by

said appraisers, if any appraisers have been appointed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972.]

**§ 165. Bond of Community Administrator**

The community administrator shall at the time the inventory, appraisal, and list of claims are returned, present to the court a bond with two or more good and sufficient sureties, payable to and to be approved by the judge and his successors in a sum as is found by the judge to be adequate under all the circumstances, or a bond with one surety in a sum as is found by the judge to be adequate under all the circumstances, if the surety is an authorized corporate surety. The condition of the bond shall be that such surviving spouse will faithfully administer such community estate and will, after the payment of debts with which such property is properly chargeable, deliver to such person or persons as shall be entitled to receive the same the portion of the community estate devised or bequeathed to them under the terms of the will of the deceased spouse, or which passes to them under the laws of descent and distribution. Either spouse may by will apportion community indebtedness as between the devisees and legatees of such testator and the surviving spouse, but this shall not include the power to charge the community share of the surviving spouse with more than the portion of the community debts for which it would otherwise be liable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1965, 59th Leg., p. 717, ch. 339, § 1, eff. June 9, 1965; Acts 1971, 62nd Leg., p. 982, ch. 173, § 12, eff. Jan. 1, 1972.]

**§ 166. Order of the Court**

When such inventory, appraisal, list of claims, and bond are returned to the judge, he shall examine the same and approve or disapprove them by an order to that effect and, when approved, the order approving them shall also authorize the survivor as community administrator to control, manage, and dispose of the community property in accordance with the provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 167. Powers of Community Administrator**

When the order mentioned in the preceding section has been entered, the survivor, without any further action in the court, shall have the power to control, manage, and dispose of the community property, as provided in this Code, as fully and completely as if he or she were the sole owner thereof, and to sue and be sued with regard to the same; and a certified copy of the order of the court shall be evidence of the qualification and right of such survivor. After paying community debts outstanding at the death of the deceased spouse, the qualified community administrator may carry on as statutory trustee for the owners of the community estate, investing and reinvesting the funds of the estate and continuing the operation of community enterprises until the termination of the trust as provided in this Code. The qualified community administrator is not

entitled to mortgage community property to secure debts incurred for his individual benefit, or otherwise to appropriate the community estate to his individual benefit; but he may transfer or encumber his individual interest in the community estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972.]

#### § 168. Accounting by Survivor

The survivor, whether qualified as community administrator or not, shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of the community property; and, upon final partition of such estate, shall deliver to the heirs, devisees or legatees of the deceased spouse their interest in such estate, and the increase and profits of the same, after deducting therefrom the proportion of the community debts chargeable thereto, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. Neither the survivor nor his bondsmen shall be liable for losses sustained by the estate, except when the survivor has been guilty of gross negligence or bad faith.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972.]

#### § 169. Payment of Debts

The community administrator shall pay all just and legal community debts within the time, and according to the classification, and in the order prescribed for the payment of debts in other administrations. Where there is a deficiency of assets to pay all claims of the same class, such claims shall be paid pro rata.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 170. New Appraisalment or New Bond

Any person interested in a community estate may cause a new appraisalment to be made of the same, or may cause a new bond to be required of the survivor, for the same causes and in like manner as provided in other administrations.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 171. Creditor May Require Exhibit

Any creditor of the community estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisalment, list of claims, and bond by the survivor, may by written application to the court cause such survivor to be cited by personal service to appear and make an exhibit to the court in writing and under oath, showing fully and specifically:

(a) The debts that have been presented to him against such community estate and their class; and

(b) The debts that have been paid by him and those that remain unpaid, and the class of each; and

(c) The property that has been disposed of by him, and the amount received therefor; and

(d) The property remaining on hand; and

(e) An account of losses, expenses, and commissions.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 172. Action of Court Upon Exhibit

When such exhibit has been returned to the court and filed, the court shall examine the same and hear exceptions and objections thereto, and evidence in support of or against same. Should it appear to the court from such exhibit or from other evidence that such community estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, the court shall enter an order requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect the same for thirty days after the date of such order, the following proceedings shall be had:

(a) If said debt be for the amount of One Thousand Dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them by personal service to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

(b) If the amount due and payable to such creditor exceeds One Thousand Dollars, exclusive of interest, the creditor may have his action against such survivor and the sureties upon his bond in the District Court of the county where the survivor's bond is filed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 173. Approval of Exhibit

If, after examining the exhibit and after receiving evidence in support of or against the same, the court is satisfied that the estate has been fairly administered in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order approving such exhibit and directing the same to be recorded, and shall also in such order declare the community administration closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 174. Failure to File Exhibit

Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed as if the creditor's right to the payment of his claim had been fully established.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 175. Termination of Community Administration

After the lapse of twelve months from the filing of the bond of the survivor, the community administration may be terminated whenever termination is

desired by either the survivor or the persons entitled to the share of the deceased spouse, or to any portion thereof. Partition and distribution of the community estate may be had and the administration closed either by proceedings as in other independent administration or by proceedings in the appropriate District Court. When the community administration is closed, the community administrator shall be discharged and his bondsmen released from further liability.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 176. Remarriage of Surviving Wife**

The remarriage of a surviving wife shall not terminate her powers or liabilities as a qualified community administratrix; nor shall it terminate her powers as a surviving partner.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 177. Distribution of Powers Among Personal Representatives and Surviving Spouse**

**(a) When Community Administrator Has Qualified.** The qualified community administrator is entitled to administer the entire community estate, including the part which was by law under the management of the deceased spouse during the continuance of the marriage.

**(b) When No Community Administrator Has Qualified.** When an executor of the estate of a deceased spouse has duly qualified, such executor is authorized to administer, not only the separate property of the deceased spouse, but also the community property which was by law under the management of the deceased spouse during the continuance of the marriage and all of the community property that was by law under the joint control of the spouses during the continuance of the marriage. The surviving spouse, as surviving partner of the marital partnership, is entitled to retain possession and control of all community property which was legally under the sole management of the surviving spouse during the continuance of the marriage and to exercise over that property all the powers elsewhere in this part of this Code authorized to be exercised by the surviving spouse when there is no administration pending on the estate of the deceased spouse. The surviving spouse may by written instrument filed with the clerk waive any right to exercise powers as community survivor, and in such event the executor or administrator of the deceased spouse shall be authorized to administer upon the entire community estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972.]

**CHAPTER VII. EXECUTORS, ADMINISTRATORS, AND GUARDIANS**

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## PART 1. APPOINTMENT AND ISSUANCE OF LETTERS

## § 178. When Letters Testamentary or of Administration Shall Be Granted

(a) **Letters Testamentary.** When a will has been probated, the court shall, within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law.

(b) **Letters of Administration.** When a person shall die intestate, or where no executor is named in a will, or where the executor is dead or shall fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator, shall be granted, should administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application. Such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the distributees, but mention of these two instances of necessity for administration shall not prevent the court from finding other instances of necessity upon proof before it.

(c) **Failure to Issue Letters Within Prescribed Time.** Failure of a court to issue letters testamentary within the twenty day period prescribed by this Section shall not affect the validity of any letters testamentary which are issued subsequent to such period, in accordance with law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## § 179. Opposition to Grant of Letters of Administration

When application is made for letters of administration, any person may at any time before the application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial,

the court shall grant letters to the person that may seem best entitled to them, having regard to applicable provisions of this Code, without further notice than that of the original application.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## § 180. Effect of Finding That No Necessity for Administration Exists

When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the distributees of the decedent, and such distributees shall be entitled to enforce their right to such payment or transfer by suit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## § 181. Orders Granting Letters Testamentary or of Administration

When letters testamentary or of administration are granted, the court shall make an order to that effect, which shall specify:

(a) The name of the testator or intestate; and

(b) The name of the person to whom the grant of letters is made; and

(c) If bond is required, the amount thereof; and

(d) If any interested person shall apply to the court for the appointment of an appraiser or appraisers, or if the court deems an appraisal necessary, the name of not less than one nor more than three disinterested persons appointed to appraise the estate and return such appraisal to the court; and

(e) That the clerk shall issue letters in accordance with said order when the person to whom said letters are granted shall have qualified according to law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1967, 60th Leg., p. 1815, ch. 697, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1922, ch. 641, § 10, eff. June 12, 1969.]

## § 182. When Clerk Shall Issue Letters

Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 183. What Constitutes Letters**

Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that the executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification, and the name of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 184. Order Appointing Guardian**

The order of the court appointing a guardian shall specify:

- (a) The name of the person appointed.
- (b) The name of the ward.
- (c) Whether the guardian is of the person, or the estate, or of both the person and estate, of such ward, or of a person for whom it is necessary to have a guardian appointed to receive money or funds from a governmental source.
- (d) The amount of bond required, if any; and
- (e) If it be the guardianship of the estate, and if the court deems an appraisal necessary, the order shall also appoint not less than one nor more than three disinterested persons to appraise such estate, and to return such appraisal to the Court.

(f) That the clerk shall issue letters of guardianship to the person appointed when such person has qualified according to law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

**§ 185. Issuance of Letters of Guardianship**

When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, if bond be required, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and the date thereof, which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 186. Letters or Certificate Made Evidence**

Letters testamentary, of administration, or of guardianship, or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate or ward and of the date of qualification.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 187. Issuance of Other Letters**

When letters have been destroyed or lost, the clerk shall issue other letters in their stead, which shall have the same force and effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold such letters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 188. Rights of Third Persons Dealing With Executors or Administrators**

When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and the law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled, and declared invalid.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES**

**§ 189. How Executors, Administrators, and Guardians Shall Qualify**

A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor or guardian who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 190. Oaths of Executors and Administrators**

(a) **Executor, or Administrator With Will Annexed.** Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor, or appointed administrator with the will annexed, shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of \_\_\_\_\_, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said \_\_\_\_\_."

(b) **Administrator.** Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that \_\_\_\_\_, deceased, died without leaving any lawful will (or that the named executor in any such will is dead or has failed or neglected to offer the same for probate, or to accept and qualify as executor, within the time required, as the case may be), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased."

(c) **Temporary Administrator.** Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of \_\_\_\_\_, deceased, in accordance with

the law, and with the order of the court appointing me such administrator.”

(d) **Filing and Recording of Oaths.** All such oaths may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 191. Oath of Guardian

The guardian shall take an oath to discharge faithfully the duties of guardian of the person, or of the estate, or of the person and estate, of the ward or of a person for whom it is necessary to have a guardian to receive funds or money from a governmental source, as the case may be, according to law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 192. Time for Taking Oath and Giving Bond

The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration or of guardianship, as the case may be, or before such letters shall have been revoked for a failure to qualify within the time allowed. All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 193. Bond of Guardian of Person

The bond of a guardian of the person shall be in an amount to be fixed by the Court granting such guardianship, not to exceed One Thousand Dollars (\$1000), shall be payable to the county or probate judge, and to his successors in office, in the county in which the proceedings are pending, and may be approved by either of such judges in his official capacity. The bond shall be conditioned that the guardian will faithfully discharge the duties of guardian of the person of his ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 6(a).]

### § 194. Bonds of Personal Representatives of Estates

Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary, or of administration or guardianship of estates, the recipient of letters shall enter into bond conditioned as required by law, payable to the county judge or probate judge of the county in which the probate proceedings are pending and to his successors in office. Such bonds shall bear the written approval of either of such judges in his official capacity, and shall be executed and approved in accordance with the following rules:

#### 1. Court to Fix Penalty.

The penalty of the bond shall be fixed by the judge, in an amount deemed sufficient to protect the estate and its creditors, as hereinafter provided.

#### 2. Bond to Protect Creditors Only, When.

If the person to whom letters testamentary or of administration is granted is also entitled to all of the decedent's estate, after payment of debts, the bond shall be in an amount sufficient to protect creditors only, notwithstanding the rules applicable generally to bonds of personal representatives of estates.

#### 3. Before Fixing Penalty, Court to Hear Evidence.

In any case where a bond is, or shall be, required of a personal representative of an estate, the court shall, before fixing the penalty of the bond, hear evidence and determine:

(a) The amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm or ranch owned by the estate, and expenses of administration for one (1) year; and

(b) The revenue anticipated to be received in the succeeding twelve (12) months from dividends, interest, rentals, or use of real or personal property belonging to the estate and the aggregate amount of any installments or periodical payments to be collected; and

(c) The estimated value of certificates of stock, bonds, notes, or securities of the estate or ward, the name of the depository, if any, in which said assets are held for safekeeping, the face value of life insurance or other policies payable to the person on whose estate administration is sought, or to such estate, and such other personal property as is owned by the estate, or by one under disability; and

(d) The estimated amount of debts due and owing by the estate or ward.

#### 4. Penalty of Bond.

The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

#### 5. Agreement as to Deposit of Assets.

It shall be lawful, and the court may require such action when deemed in the best interest of an estate or ward, for a personal representative to agree with the surety or sureties, either corporate or personal,

for the deposit of any or all cash, and safekeeping of other assets of the estate in a domestic state or national bank, trust company, savings and loan association, or other domestic corporate depository, duly incorporated and qualified to act as such under the laws of this State or of the United States, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

#### 6. Deposits Authorized or Required, When.

Cash or securities or other personal assets of an estate or ward or which an estate or ward is entitled to receive may, and if deemed by the court in the best interest of such estate or ward shall, be deposited or placed in safekeeping as the case may be, in one or more of the depositories hereinabove described upon such terms as shall be prescribed by the court. The court in which the proceedings are pending, upon its own motion, or upon written application of the representative or of any other person interested in the estate or ward may authorize or require additional assets of the estate then on hand or as they accrue during the pendency of the probate proceedings to be deposited or held in safekeeping as provided above. The amount of the bond of the personal representative shall be reduced in proportion to the cash so deposited, or the value of the securities or other assets placed in safekeeping. Such cash so deposited, or securities or other assets held in safekeeping, or portions thereof, may be withdrawn from a depository only upon order of the court, and the bond of the personal representative shall be increased in proportion to the amount of cash or the value of securities or other assets so authorized to be withdrawn.

#### 7. Representative May Deposit Cash or Securities of His Own in Lieu of Bond.

It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, or for the purpose of reducing the amount of such bond, to deposit out of his own assets cash or securities acceptable to the court, with a depository such as named above or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required, or the bond reduced by the value of assets so deposited.

#### 8. Rules Applicable to Making and Handling Deposits in Lieu of Bond or to Reduce Penal Sum of Bond.

(a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing the amount of cash or, if securities, the amount and description thereof, and agreeing not to disburse or

deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.

(b) The amount of cash or securities on deposit may be increased or decreased, by order of the court from time to time, as the interest of the estate shall require.

(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn or released only on order of a court having jurisdiction.

(d) Creditors shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

(e) The court may on its own motion, or upon written application by the representative or by any other person interested in the estate, require that adequate bond be given by the representative in lieu of such deposit, or authorize withdrawal of the deposit and substitution of a bond with sureties therefor. In either case, the representative shall file a sworn statement showing the condition of the estate, and unless the same be filed within twenty (20) days after being personally served with notice of the filing of an application by another, or entry of the court's motion, he shall be subject to removal as in other cases. The deposit may not be released or withdrawn until the court has been satisfied as to the condition of the estate, has determined the amount of bond, and has received and approved the bond.

#### 9. Withdrawal of Deposits when Estate Closed.

Upon the closing of an estate, any such deposit or portion thereof remaining on hand, whether of the assets of the representative, or of the assets of the estate, or of the surety, shall be released by order of court and paid over to the person or persons entitled thereto. No writ of attachment or garnishment shall lie against the deposit, except as to claims of creditors of the estate being administered, or persons interested therein, including distributees and wards, and then only in the event distribution has been ordered by the court, and to the extent only of such distribution as shall have been ordered.

#### 10. Who May Act as Sureties.

The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties.

#### 11. Procedure When Bond Exceeds Fifty Thousand Dollars (\$50,000).

When any such bond shall exceed Fifty Thousand Dollars (\$50,000) in penal sum, the court may require that such bond be signed by two (2) or more authorized corporate sureties, or by one such surety and two (2) or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

### 12. Qualifications of Personal Sureties.

If the sureties be natural persons, there shall not be less than two (2), each of whom shall make affidavit in the manner prescribed in this Code, and the judge shall be satisfied that he owns property within this State, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as provided by law, only one surety is required if the surety is an authorized corporate surety; provided, a personal surety, instead of making affidavit, or creating a lien on specific real estate when such is required, may, in the same manner as a personal representative, deposit his own cash or securities, in lieu of pledging real property as security, subject, so far as applicable, to the provisions covering such deposits when made by personal representatives.

### 13. Bonds of Temporary Appointees.

In case of a temporary administrator or guardian, the bond shall be in such sum as the judge shall direct.

### 14. Only One Bond for Guardian of Person and Estate.

Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by the guardian, in the same amount that would be required from a guardian of the estate only.

### 15. Increased or Additional Bonds When Property Sold, Rented, Leased for Mineral Development, or Money Borrowed or Invested.

The provisions in this Section with respect to deposit of cash and safekeeping of securities shall cover, so far as they may be applicable, the orders to be entered by the court when real or personal property of an estate has been authorized to be sold or rented, or money borrowed thereon, or when real property, or an interest therein, has been authorized to be leased for mineral development or subjected to unitization, the general bond having been found insufficient, or when money is borrowed or invested on behalf of a ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 6b; Acts 1971, 62nd Leg., p. 983, ch. 173, § 14, eff. Jan. 1, 1972.]

### § 195. When No Bond Required

(a) **By Will.** Whenever any will probated in a Texas court directs that no bond or security be required of the person or persons named as executors, or when such a will is made by a surviving parent and directs that the guardian or guardians therein appointed serve without bond, the court finding that such person or persons are qualified, letters testamentary or of guardianship, as is proper, shall be issued to the persons so named, without requirement of bond.

(b) **Corporate Fiduciary Exempted From Bond.** If a personal representative is a corporate fiduciary,

as said term is defined in this Code, no bond shall be required.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 196. Form of Bond

The following form, or the same in substance, may be used for the bonds of personal representatives:

"The State of Texas

"County of \_\_\_\_\_

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound unto the county (or probate) judge of the County of \_\_\_\_\_, and his successors in office, in the sum of \_\_\_\_\_ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has been appointed by the said judge of \_\_\_\_\_ County, administrator with the will annexed of the estate of J. C., deceased, or has been appointed by the said judge of \_\_\_\_\_ County, administrator of the estate of J. C., deceased, or has been appointed by the said judge of \_\_\_\_\_ County, temporary administrator of the estate of J. C., deceased, as the case may be, or has been appointed by the judge of said county as guardian or temporary guardian of the estate, or of the person or person and estate of \_\_\_\_\_, stating in each case whether or not such person is a minor or a person of unsound mind or an habitual drunkard or a person for whom a guardian is necessary to receive funds or money from a governmental source), shall well and truly perform all of the duties required of him by law under said appointment."

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 197. Bonds to Be Filed

All bonds required by preceding provisions of this Code shall be subscribed by both principals and sureties, and, when approved by the court, be filed with the clerk.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 198. Bonds of Joint Representatives

When two or more persons are appointed representatives of the same estate or person and are required by the provisions of this Code or by the court to give a bond, the court may require either a separate bond from each or one joint bond from all of them.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 199. Bonds of Married Women

When a married woman is appointed executrix, administratrix, or guardian, she may, jointly with her husband, or without her husband, execute such bond as the law requires; and such bond shall bind her separate estate, but shall bind her husband only if signed by him.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 200. Bond of Married Person Under Twenty-one Years of Age**

When a person under twenty-one years of age who is or has been married shall accept and qualify as executor, administrator, or guardian, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 201. (a) Affidavit of Personal Surety; (b) Lien on Specific Property, When Required; (c) Subordination of Lien Authorized**

**(a) Affidavit of Personal Surety.** Before the judge may consider a bond with personal sureties, each person offered as surety shall execute an affidavit stating the amount of his assets, reachable by creditors, of a value over and above his liabilities, the total of the worth of such sureties to be equal to at least double the amount of the bond, and such affidavit shall be presented to the judge for his consideration and, if approved, shall be attached to and form part of the bond.

**(b) Lien on Specific Property, When Required.** If the judge finds that the estimated value of personal property of the estate which cannot be deposited or held in safekeeping as hereinabove provided is such that personal sureties cannot be accepted without the creation of a specific lien on real property of such sureties, he shall enter an order requiring that each surety designate real property owned by him within this State subject to execution, of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of such property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and be attached to and form part of the bond. If compliance with such order is not had, the judge may in his discretion require that the bond be signed by an authorized corporate surety, or by such corporate surety and two (2) or more personal sureties.

**(c) Subordination of Lien Authorized.** If a personal surety who has been required to create a lien on specific real estate desires to lease such property for mineral development, he may file his written application in the court in which the proceedings are pending, requesting subordination of such lien to the proposed lease, and the judge of such court may, in his discretion, enter an order granting such application. A certified copy of such order, filed and recorded in the deed records of the proper county, shall be sufficient to subordinate such lien to the rights of a lessee, in the proposed lease. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 6(c).]

**§ 202. Bond as Lien on Real Property of Surety**

When a personal surety has been required by the court to create a lien on specific real property as a condition of his acceptance as surety on a bond, a lien on the real property of the surety in this State which is described in the affidavit of the surety, and

only upon such property, shall arise as security for the performance of the obligation of the bond. The clerk of the court shall, before letters are issued to the representative, cause to be mailed to the office of the county clerk of each county in which is located any real property as set forth in the affidavit of the surety, a statement signed by the clerk, giving a sufficient description of such real property, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The county clerk to whom such statement is sent shall record the same in the deed records of the county. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined, and such recording and indexing of such statement shall constitute and be constructive notice to all persons of the existence of such lien on such real property situated in such county, effective as of date of such indexing.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 6(d).]

**§ 203. When New Bond May Be Required**

A personal representative may be required to give a new bond in the following cases:

- (a) When the sureties upon the bond, or any one of them, shall die, remove beyond the limits of the state, or become insolvent; or
- (b) When, in the opinion of the court, the sureties upon any such bond are insufficient; or
- (c) When, in the opinion of the court, any such bond is defective; or
- (d) When the amount of any such bond is insufficient; or
- (e) When the sureties, or any one of them, petitions the court to be discharged from future liability upon such bond; or
- (f) When the bond and the record thereof have been lost or destroyed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 204. Demand for New Bond by Interested Person**

Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the probate proceedings are pending, alleging that the bond of the personal representative is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such representative to be cited to appear and show cause why he should not give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 205. Judge to Require New Bond**

When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, the judge shall without delay cause the representative to be cited to show cause why he should not give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 206. Order Requiring New Bond**

Upon the return of a citation ordering a personal representative to show cause why he should not give a new bond, the judge shall, on the day named therein for the hearing of the matter, proceed to inquire into the sufficiency of the reasons for requiring a new bond; and, if satisfied that a new bond should be required, he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 207. Order Suspends Powers of Personal Representative**

When a personal representative is required to give a new bond, the order requiring such bond shall have the effect to suspend his powers, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 208. Decrease in Amount of Bond**

A personal representative required to give bond may at any time file with the clerk a written application to the court to have his bond reduced. Forthwith the clerk shall issue and cause to be posted notice to all persons interested and to the surety or sureties on the bond, apprising them of the fact and nature of the application and of the time when the judge will hear the application. The judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate, and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 209. Discharge of Sureties Upon Execution of New Bond**

When a new bond has been given and approved, an order shall be entered discharging the sureties upon the former bond from all liability for the future acts of the principal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 210. Release of Sureties Before Estate Fully Administered**

The sureties upon the bond of a personal representative, or any one of them, may at any time file with the clerk a petition to the court in which the proceedings are pending, praying that such representative be required to give a new bond and that petitioners be discharged from all liability for the future acts of such representative; whereupon, such representative shall be cited to appear and give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 211. Release of Lien Before Estate Fully Administered**

If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested, if the court is satisfied that the bond is sufficient without the lien on such property, or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien which is to be released. If such personal surety who requests the release of the lien does not offer a lien on other real or personal property, and if the court is not satisfied of the sufficiency of the bond without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 212. Release of Recorded Lien on Surety's Property**

A certified copy of the court's order describing the property, and releasing the lien, filed with the county clerk of the county where the property is located, and recorded in the deed records, shall have the effect of cancelling the lien on such property.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 213. Revocation of Letters for Failure to Give Bond**

If at any time a personal representative fails to give bond as required by the court, within the time fixed by this Code, another person may be appointed in his stead.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 214. Executor or Guardian Without Bond Required to Give Bond**

Where no bond is required of an executor or guardian appointed by will, any person having a debt, claim, or demand against the estate, to the justice of which oath has been made by himself, his agent, or attorney, or any other person interested in such estate, whether in person or as the representative of another, may file a complaint in writing in the court where such will is probated, and the court shall thereupon cite such executor or guardian to appear and show cause why he should not be required to give bond.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 215. Order Requiring Bond**

Upon hearing such complaint, if it appears to the court that such executor or guardian is wasting, mismanaging, or misapplying such estate, and that thereby a creditor may probably lose his debt, or that thereby some person's interest in the estate may be diminished or lost, the court shall enter an order requiring such executor or guardian to give bond within ten days from the date of such order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 216. Bond in Such Case**

Such bond shall be for an amount sufficient to protect the estate and its creditors, to be approved by, and payable to, the judge, conditioned that said executor or guardian will well and truly administer such estate, and that he will not waste, mismanage, or misapply the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 217. Failure to Give Bond**

Should the executor or guardian fail to give such bond within ten days after the order requiring him to do so, then if the judge does not extend the time, he shall, without citation, remove such executor or guardian and appoint some competent person in his stead who shall administer the estate according to the provisions of such will or the law, and who, before he enters upon the administration of said estate, shall take the oath required of an administrator with the will annexed or of a guardian as the case may be, and shall give bond in the same manner and in the same amount provided in this Code for the issuance of original letters of administration or guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 218. Bonds Not Void Upon First Recovery**

The bonds of personal representatives shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 219. Repealed by Acts 1957, 55th Leg., p. 53, ch. 31, § 13, eff. 90 days after May 23, 1957, date of adjournment**

The repealed article provided for agreement as to deposit of assets and read as follows:

"It shall be lawful for a personal representative of an estate to agree with his surety for the deposit of any or all moneys and other assets of the estate with a state or national bank, safe deposit corporation, or trust company authorized by law to do business as such or with another corporate depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from liability or change the liability of the principal or sureties as established by the terms of the bond."

**PART 3. REVOCATION OF LETTERS, DEATH, RESIGNATION, AND REMOVAL**

**§ 220. Appointment of Successor Representative**

**(a) Because of Death, Resignation or Removal.** When a person duly appointed a personal representative fails to qualify, or, after qualifying, dies, resigns, or is removed, the court may, upon application appoint a successor if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, a final accounting. In case of death, the legal representatives of the deceased person shall account for, pay, and deliver to the person or persons legally entitled to receive the same, all the property of every kind belonging to the estate entrusted to his care, at such time and in such manner as the court shall order. Upon the finding that a necessity for the immediate appointment of a

successor representative exists, the court may appoint such successor without citation or notice.

**(b) Because of Existence of Prior Right.** Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

**(c) When Named Executor or Guardian Becomes an Adult.** If one named in a will as executor or guardian is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor or guardian, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

**(d) Upon Return of Sick or Absent Executor or Guardian.** If one named in a will as executor or guardian was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor or guardian within twenty days after the probate of the will, he may accept and qualify as executor or guardian within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

**(e) When Will Is Discovered After Administration Granted.** If it is discovered after letters of administration have been issued that the deceased left a lawful will, the letters shall be revoked and proper letters issued to the person or persons entitled thereto.

**(f) When Application and Service Necessary.** Except when otherwise expressly provided in this Code, letters shall not be revoked and other letters granted except upon application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that he appear and show cause why such application should not be granted.

**(g) Payment or Tender of Money Due During Vacancy.** Money or other thing of value falling due to an estate or ward while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate or ward, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

### § 221. Resignation

(a) **Application to Resign.** A personal representative who wishes to resign his trust shall file with the clerk his written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the estate entrusted to his care.

(b) **Successor Representatives.** If the necessity exists, the court may immediately accept a resignation and appoint a successor, but shall not discharge the person resigning, or release him or the sureties on his bond until final order or judgment shall have been rendered on his final account.

(c) **Citation.** Upon the filing of an application to resign, supported by exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing upon the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed, and the time and place set for hearing, at which time said persons may appear and contest the exhibit and account. The citation shall be posted, unless the court directs that it be published.

(d) **Hearing.** At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he shall enter an order of approval, and require that the estate remaining in the possession of the applicant, if any, be delivered to the person or persons entitled by law to receive it. A guardian of the person shall be required to comply with all lawful orders of the court concerning his ward.

(e) **Requisites of Discharge.** No resigning personal representative shall be discharged until the application has been heard, the exhibit and account examined, settled, and approved, and until he has satisfied the court that he has delivered the estate, if there be any remaining in his possession, or has complied with all lawful orders of the court with relation to his trust.

(f) **Final Discharge.** When the resigning applicant has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if he is under bond, his sureties.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 222. Removal

(a) **Without Notice.** The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

- (1) Neglects to qualify in the manner and time required by law; or

- (2) Fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge; or

- (3) Having been required to give a new bond, fails to do so within the time prescribed; or

- (4) Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State; or

- (5) Cannot be served with notices or other processes by reason of the fact that his whereabouts are unknown, or by reason of the fact that he is eluding service.

(b) **With Notice.** The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

- (1) Sufficient grounds appear to support belief that he has misapplied, embezzled, or removed from the state, or that he is about to misapply, embezzle, or remove from the state, all or any part of the property committed to his care; or

- (2) He fails to return any account which is required by law to be made; or

- (3) He fails to obey any proper order of the court having jurisdiction with respect to the performance of his duties; or

- (4) He is proved to have been guilty of gross misconduct, or mismanagement in the performance of his duties; or

- (5) He becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of his trust; or

- (6) As executor or administrator, he fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or

- (7) As guardian of the person, he cruelly treats the ward, or neglects to educate or maintain the ward as liberally as the means of such ward and the condition of his estate permit.

(c) **Order of Removal.** The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative, and as to the person of a ward, that control be relinquished as required in the order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

PART 4. SUBSEQUENT PERSONAL REPRESENTATIVES

§ 223. Further Administration With or Without Will Annexed

Whenever any estate is unrepresented by reason of the death, removal, or resignation of the personal representative of such estate, the court shall grant further administration of the estate when necessary, and with the will annexed where there is a will, upon application therefor by a qualified person interested in the estate. Such appointments shall be made on notice and after hearing, as in case of original appointments, except that when the court finds that there is a necessity for the immediate appointment of a successor representative, such successor may be appointed upon application but without citation or notice.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

§ 224. Successors Succeed to Prior Rights, Powers, and Duties

When a representative of the estate not administered succeeds another, he shall be clothed with all rights, powers, and duties of his predecessor, except such rights and powers conferred on the predecessor by will which are different from those conferred by this Code on personal representatives generally. Subject to this exception, the successor shall proceed to administer such estate in like manner as if his administration were a continuation of the former one. He shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give in order to enforce the delivery of the estate and the liability of the sureties of his predecessor for so much as is not delivered. He shall be excused from accounting for such of the estate as he has failed to recover after due diligence. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 225. Additional Powers of Successor Appointee

In addition, such appointee may make himself, and may be made, a party to suits prosecuted by or against his predecessors. He may settle with the predecessor, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the predecessor in his own name and capacity, for all the estate that came into the hands of the predecessor and has not been accounted for by him.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 226. Subsequent Executors and Guardians Also Succeed to Prior Rights and Duties

Whenever an executor or guardian shall accept and qualify after letters of administration shall have been granted upon the estate, such executor or guardian shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration were a continuation of the former one, subject, however, to any

legal directions of the testator contained in the will in relation to the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 227. Successors Return of Inventory, Appraisal, and List of Claims

An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisal, and list of claims of the estate, within ninety days after being qualified, in like manner as is required of original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments upon the application of any person interested in the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969.]

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

§ 228. Powers, Duties, and Obligations of Guardian of Person Entitled to Governmental Funds

(a) A guardian of the estate of a person for whom it is necessary to have a guardian appointed to receive funds from a governmental agency shall have the power to administer only the funds so received from such governmental agency, and all earnings, interest, or profits derived therefrom and all property acquired therewith, and shall not be considered as a general guardian of the estate of such ward. Such guardian shall have the power to receive and receipt for such funds, to pay out under appropriate order of the court the expenses of administering the estate and for the support, maintenance, and education of the ward and his dependents, and to invest under the order of the court the surplus funds as they accumulate in the estate, as authorized by Part 10 of Chapter 8 of this Code. The procedural, administrative, and penal provisions of this Code shall be binding upon the guardian in his original appointment and in the administration of the estate of such ward.

(b) All acts heretofore performed by guardians of the estate of a person for whom it is necessary to have a guardian appointed to receive and disburse funds due such person from a governmental source or agency, performed in conformance with orders of a county or probate court having venue with respect to the support, maintenance, and education of the ward and his dependents, and the investment of surplus funds of the ward under the general guardianship laws of this State, which acts are not in issue as to legality in any probate proceeding or civil suit pending on the effective date of this Act, are hereby validated.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 7.]

### § 229. Guardians of the Person

The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated; and, if necessary for his support, to see that he learns a trade or adopts a useful profession.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 230. Care of Property of Estates

(a) **Estates of Decedents.** The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

(b) **Estates of Wards.** The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 231. Summary of Powers of Guardians of Person and Estate

The guardian of both person and estate has all the rights and powers, and shall perform all the duties, of the guardian of the person and of the guardian of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 232. Representative of Estate Shall Take Possession of Personal Property and Records

The personal representative of an estate, immediately after receiving letters, shall collect and take into possession the personal property, record books, title papers, and other business papers of the estate, and all such in his possession shall be delivered to the person or persons legally entitled thereto when the administration has been closed or a successor has received letters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 233. Collection of Claims and Recovery of Property

Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of

collecting such claims or of recovering such property. If he wilfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as has been lost by such neglect. Such representatives may enter into contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys and incidental expenses, subject only to approval of the court in which the estate is being administered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 234. Exercise of Powers With and Without Court Order

(a) **Powers To Be Exercised Under Order of the Court.** The personal representative of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or to such estate. When a personal representative deems it for the interest of the estate, he may, upon written application to the court, and by order granting authority:

- (1) Purchase or exchange property;
- (2) Take claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate;
- (3) Compound bad or doubtful debts due or owing to the estate;
- (4) Make compromises or settlements in relation to property or claims in dispute or litigation;
- (5) Compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying to the holder of such claim the real estate or personalty securing the same, in full payment, liquidation, and satisfaction thereof, and in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claim.

(b) **Powers To Be Exercised Without Court Order.** The personal representative of the estate of any person may, without application to or order of the court, exercise the powers listed below, provided, however, that a personal representative under court control may apply and obtain an order if doubtful of the propriety of the exercise of any such powers:

- (1) Release liens upon payment at maturity of the debt secured thereby;
- (2) Vote stocks by limited or general proxy;
- (3) Pay calls and assessments;
- (4) Insure the estate against liability in appropriate cases;
- (5) Insure property of the estate against fire, theft, and other hazards;
- (6) Pay taxes, court costs, bond premiums.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 984, ch. 173, § 15, eff. Jan. 1, 1972.]

**§ 235. Possession of Property Held in Common Ownership**

If the estate holds or owns any property in common, or as part owner with another, the representative of the estate shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 236. Sums Allowable for Education and Maintenance of Ward**

**(a) Expenditures Directed by the Court**

The Court may direct the guardian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise, the guardian shall not be allowed, for the education and maintenance of the ward, more than the net income of the estate. When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person such sums as shall be fixed by the Court, at times specified by the Court, for the education and maintenance of the ward, and, on failure to do so, shall be compelled to make such payment by order of the Court, after being duly cited.

**(b) Court Approval of Previous Expenditures**

When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for emergency purposes, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not exceed the sum of One Thousand Dollars (\$1,000).

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1963, 58th Leg., p. 116, ch. 67, § 1.]

**§ 237. Title of Wards Not to Be Disputed**

Neither the guardian nor his heirs, executors, administrators, or assigns shall dispute the right of the ward to any property that came into the possession of such guardian as guardian, except such property as shall have been recovered from the guardian, or except property on account of which there is a personal action pending.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 238. Operation of Farm, Ranch, Factory, or Other Business**

If the estate owns a farm, ranch, factory, or other business, the disposition of which has not been spe-

cifically directed by will, and if the same be not required to be sold at once for the payment of debts or other lawful purposes, the representative, upon order of the court, shall carry on the operation of such farm, ranch, factory, or other business, or cause the same to be done, or rent the same, as shall appear to be for the best interest of the estate. In deciding, the court shall consider the condition of the estate, and the necessity that may exist for future sale of such property or business for the payment of debts, claims, or other lawful expenditures, and shall not extend the time of renting any of the property beyond what appears consistent with the speedy settlement of the estate of a deceased person, or the maintenance and education of a ward or the settlement of his estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 239. Payment or Credit of Income**

In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a court in the exercise of its probate jurisdiction, upon the application of the executor or administrator of said estate, or of any interested party, after notice thereof has been given by posting, if it appears from evidence introduced at the hearing upon said application, and the court finds, that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and that no creditor or legatee of the estate has then appeared and objected, the court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the court finds will own the assets of the estate when the administration thereon is completed, and in the same proportions, such part of the annual net income received by or accruing to said estate, as the court believes and finds can conveniently be paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the court to order paid over to such owners of the estate any part of the corpus or principal of the estate, except as otherwise provided by sections of this Code; provided, however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, or other mineral lease shall be treated and regarded as income, and not as corpus or principal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1973, 63rd Leg., p. 407, ch. 182, § 1, eff. May 25, 1973.]

**§ 240. Joint Executors or Administrators**

Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor

or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred. Provided, however, that this Section shall not be construed to authorize one of several executors or administrators to convey real estate, but in such case all the executors or administrators who have qualified as such and are acting as such shall join in the conveyance, unless the court, after due hearing, authorizes less than all to act.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

### § 241. Compensation of Personal Representatives

(a) **Compensation of Executors and Administrators.** Executors and administrators shall be entitled to receive, and may retain in their hands, a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate; provided, no commission shall be allowed for receiving cash belonging to the testator or intestate which was on hand or on deposit to his credit in a bank at the time of his death, nor for paying out cash to the heirs or legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent (5%) of the gross fair market value of the estate subject to administration. If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors.

(b) **Compensation of Guardians.** A guardian of the person alone is entitled to no compensation. The guardian of the estate, or of the person and estate, shall not be entitled to, or receive, any fee or commission on the estate of the ward when it is first delivered to him; but shall be entitled to a fee of five per cent (5%) on the gross income of the ward's estate and five per cent (5%) on all money paid out. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. If the guardian manages a farm, ranch, factory, or other business of his ward, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 8.]

### § 242. Expenses Allowed

Personal representatives of estates shall also be entitled to all necessary and reasonable expenses incurred by them in the preservation, safekeeping, and management of the estate, and in collecting or attempting to collect claims or debts, and in recovering or attempting to recover property to which the

estate has a title or claim, and all reasonable attorney's fees, necessarily incurred in connection with the proceedings and management of such estate, on satisfactory proof to the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 243. Allowance for Defending Will

When any person designated as executor in a will, or as administrator with the will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the purpose of having the will admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in such proceedings.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 244. Expense Accounts

All expense charges shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by affidavit of the representative, filed with the clerk and entered on the claim docket, and shall be acted on by the court in like manner as other claims against the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 245. When Costs Are Adjudged Against Representative

When the personal representative of an estate or person neglects the performance of any duty required of him, and any costs are incurred thereby, or if he is removed for cause, he and the sureties on his bond shall be liable for all costs so incurred.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 246. Exemption From Fees and Costs in Guardianships for Reception of Governmental Funds

Whenever a guardian is appointed for the purpose of enabling a person to receive public assistance which is contingent upon need, from the State or Federal Government, the court may, in its discretion, order that no costs or fees be charged in connection with the proceeding.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 247. Costs Against Estates of Incompetents

When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate, or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

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## PART 1. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

## § 248. Appointment of Appraisers

At any time after the grant of letters testamentary or of administration or of guardianship, upon the application of any interested person or if the court shall deem necessary, the court shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1967, 60th Leg., p. 1815, ch. 697, § 2, eff. Aug. 28, 1967, 90 days after date of adjournment.]

## § 249. Failure of Appraisers to Serve

If any appraiser so appointed shall fail or refuse to act, the court shall by a like order or orders remove such appraiser and appoint another appraiser or appraisers, as the case shall require.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1967, 60th Leg., p. 1815, ch. 697, § 3, eff. Aug. 28, 1967, 90 days after date of adjournment.]

## § 250. Inventory and Appraisal

Within ninety days after his qualification, unless a longer time shall be granted by the court, the representative shall file with the clerk of court a verified, full and detailed inventory, in one written instrument, of all the property of such estate which has come to his possession or knowledge, which inventory shall include:

(a) all real property of the estate situated in the State of Texas;

(b) all personal property of the estate wherever situated. The representative shall set out in the inventory his appraisal of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration or as of the date of grant of letters of guardianship, as the case may be; provided that if the court shall appoint an appraiser or appraisers of the estate, the representative shall determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and shall set out in the inventory such appraisal. The inventory shall specify what portion of the property, if any, is separate property and what portion, if any, is community property. If any property is owned in common with others, the interest owned by the estate shall be shown, together with the names and relationship, if known, of co-owners. Such inventory, when approved by the court and duly filed with the clerk of court, shall constitute for all purposes

the inventory and appraisal of the estate referred to in this Code. The court for good cause shown may require the filing of the inventory and appraisal at a time prior to ninety days after the qualification of the representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1967, 60th Leg., p. 1815, ch. 697, § 4, eff. Aug. 28, 1967, 90 days after date of adjournment.]

**§ 251. List of Claims**

There shall also be made out and attached to said inventory a full and complete list of all claims due or owing to the estate, which shall state:

(a) The name of each person indebted to the estate and his address when known.

(b) The nature of such debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract.

(c) The date of such indebtedness, and the date when the same was or will be due.

(d) The amount of each claim, the rate of interest thereon, and time for which the same bears interest.

(e) In the case of decedent's estate, which of such claims are separate property and which are of the community.

(f) What portion of the claims, if any, is held in common with others, giving the names and the relationships, if any, of other part owners, and the interest of the estate therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 252. Affidavit to be Attached**

The representative of the estate shall also attach to such inventory and list of claims his affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the said inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to his knowledge.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 253. Fees of Appraisers**

Each appraiser appointed by the court, as herein authorized, shall be entitled to receive a minimum compensation of Five Dollars (\$5) per day, payable out of the estate, for each day that he actually serves in performance of his duties as such.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 9.]

**§ 254. Repealed by Acts 1967, 60th Leg., p. 1815, ch. 697, § 6, eff. Aug. 28, 1967**

Section 6 of Acts 1967, 60th Leg., p. 1815, ch. 697, repealing section 254 of the Probate Code relating to waiver of appraisal, provided further: "In the event that any of the provisions of this Act are in conflict with the provisions of any of the Sections of the Texas Probate Code or with any other law, the provisions hereof shall take precedence and shall prevail to the extent of such conflict."

Section 7 of the 1967 Act provided that "The repeal of any law by this Act shall not affect or impair any act done, obligation or right accrued or existing under the authority of the act repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action, obligation or right."

**§ 255. Action by the Court**

Upon return of the inventory, appraisal, and list of claims, the judge shall examine and approve, or disapprove, them, as follows:

(a) **Order of Approval.** Should the judge approve the inventory, appraisal, and list of claims, he shall issue an order to that effect.

(b) **Order of Disapproval.** Should the judge not approve the inventory, appraisal, or list of claims, or any of them, an order to that effect shall be entered, and it shall further require the return of another inventory, appraisal, and list of claims, or whichever of them is disapproved, within a time specified in such order, not to exceed twenty days from the date of the order; and the judge may also, if deemed necessary, appoint new appraisers.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 256. Discovery of Additional Property**

If, after the filing of the inventory and appraisal, property or claims not included in the inventory shall come to the possession or knowledge of the representative, he shall forthwith file with the clerk of court a verified, full and detailed supplemental inventory and appraisal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1967, 60th Leg., p. 1815, ch. 697, § 5, eff. Aug. 28, 1967, 90 days after date of adjournment.]

**§ 257. Additional Inventory or List of Claims Required by Court**

Any representative of an estate, on the written complaint of any interested person that property or claims of the estate have not been included in the inventory and list of claims filed, shall be cited to appear before the court in which the cause is pending and show cause why he should not be required to make and return an additional inventory or list of claims, or both. After hearing such complaint, and being satisfied of the truth thereof, the court shall enter its order requiring such additional inventory or list of claims, or both, to be made and returned in like manner as original inventories, and within such time, not to exceed twenty days, from the date of said order, as may be fixed by the court, but to include only property or claims theretofore not inventoried or listed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 258. Correction Required When Inventory, Appraisal, or List of Claims Erroneous or Unjust**

Any person interested in an estate who deems an inventory, appraisal, or list of claims returned therein erroneous or unjust in any particular may file a complaint in writing setting forth and pointing out the alleged erroneous or unjust items, and cause the representative to be cited to appear before the court and show cause why such errors should not be corrected. If, upon the hearing of such complaint,

the court be satisfied from the evidence that the inventory, appraisal, or list of claims is erroneous or unjust in any particular as alleged in the complaint, an order shall be entered specifying the erroneous or unjust items and the corrections to be made, and appointing appraisers to make a new appraisal correcting such erroneous or unjust items and requiring the return of said new appraisal within twenty days from the date of the order. The court may also, on its own motion or that of the personal representative of the estate, have a new appraisal made for the purposes above set out.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 259. Effect of Reappraisal

When any reappraisal is made, returned, and approved by the court, it shall stand in place of the original appraisal. Not more than one reappraisal shall be made, but any person interested in the estate may object to the reappraisal either before or after it is approved, and if the court finds that the reappraisal is erroneous or unjust, the court shall appraise the property upon the basis of the evidence before it.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 260. Failure of Joint Personal Representatives to Return an Inventory, Appraisal, and List of Claims

If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisal and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning shall have the whole administration, unless, within sixty days after the return, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 261. Use of Inventories, Appraisements, and Lists of Claims as Evidence

All inventories, appraisements, and lists of claims which have been taken, returned, and approved in accordance with law, or the record thereof, or copies of either the originals or the record thereof, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this State in any suit by or against the representative of the estate, but shall not be conclusive for or against him, if it be shown that any property or claims of the estate are not shown therein, or that the value of the property or claims

of the estate actually was in excess of that shown in the appraisal and list of claims.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 2. WITHDRAWING ESTATES OF DECEASED PERSONS FROM ADMINISTRATION

### § 262. Executor or Administrator Required to Report on Condition of Estate

At any time after the return of inventory, appraisal, and list of claims of a deceased person, any one entitled to a portion of the estate may, by a written complaint filed in the court in which such case is pending, cause the executor or administrator of the estate to be cited to appear and render under oath an exhibit of the condition of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 263. Bond Required to Withdraw Estate From Administration

When the executor or administrator has rendered the required exhibit, the persons entitled to such estate, or any of them, or any persons for them, may execute and deliver to the court a bond payable to the judge, and his successors in office, to be approved by the court, for an amount equal to at least double the gross appraised value of the estate as shown by the appraisal and list of claims returned, conditioned that the persons who execute such bond shall pay all the debts against the estate not paid that have been or shall be allowed by the executor or administrator and approved by the court, or that have been or shall be established by suit against said estate, and will pay to the executor or administrator any balance that shall be found to be due him by the judgment of the court on his exhibit.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 264. Court's Order

When such bond has been given and approved, the court shall thereupon enter an order directing and requiring the executor or administrator to deliver forthwith to all persons entitled to any portion of the estate the portion or portions of such estate to which they are entitled.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 265. Order of Discharge

When an estate has been so withdrawn from further administration, an order shall be entered discharging the executor or administrator and declaring the administration closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 266. Lien on Property of Estate Withdrawn From Administration

A lien shall exist on all of the estate withdrawn from administration in the hands of the distributees, and those claiming under them with notice of such

lien, to secure the ultimate payment of the aforesaid bond and of the debts and claims secured thereby. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 267. Partition of Estate Withdrawn From Administration

Any person entitled to any portion of the estate withdrawn from further administration may, on written application to the court, cause a partition and distribution to be made among the persons entitled thereto, in accordance with the provisions of this Code pertaining to the partition and distribution of estates.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 268. Creditors May Sue on Bond

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation shall have the right to sue on the bond in his own name, and shall be entitled to judgment thereon for such debt or claim as he shall establish against the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 269. Creditors May Sue Distributees

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation may sue any distributee who has received any of the estate, or he may sue all the distributees together, but no one of such distributees shall be liable beyond his just proportion according to the amount of the estate he shall have received in the distribution.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

### § 270. Liability of Homestead for Debts

The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon, or work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as required in making a sale and conveyance of the homestead.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 271. Exempt Property to Be Set Apart

Immediately after the inventory, appraisal, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as is exempt from execu-

tion or forced sale by the constitution and laws of the state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 272. To Whom Delivered

The exempt property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows:

(a) If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.

(b) If there be children and no widow, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors.

(c) If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors.

(d) In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the minor children and unmarried daughters, if any, living with the family.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 273. Allowance in Lieu of Exempt Property

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed Five Thousand Dollars and the allowance for other exempted property shall in no case exceed One Thousand Dollars, exclusive of the allowance for the support of the widow and minor children which is hereinafter provided for.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 274. How Allowance Paid

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such widow or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisal, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 275. To Whom Allowance Paid**

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows:

(a) If there be a widow and no children, or if all the children be the children of the widow, the whole shall be paid to such widow.

(b) If there be children and no widow, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a widow, and children of the deceased, some of whom are not children of the widow, the widow shall receive one-half of the whole, plus the shares of the children of whom she is the mother, and the remaining shares shall be paid to the children of whom she is not the mother, or, if they are minors, to their guardian.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 276. Sale to Raise Allowance**

If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such widow and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 277. Preference of Liens**

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the widow or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the widow or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 278. When Estate Is Solvent**

If, upon a final settlement of the estate, it shall appear that the same is solvent, the exempt property, except the homestead or any allowance in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 279. When Estate Is Insolvent**

Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be

absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 280. Exempt Property Not Considered in Determining Solvency**

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 281. Exempt Property Liable for Certain Debts**

The exempt property, other than the homestead or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of the deceased, when claims are presented within the time prescribed therefor, but such property shall not be liable for any other debts of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 282. Nature of Homestead Property Immaterial**

The homestead rights of the widow and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 283. Homestead Rights of Surviving Husband**

On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he elects to use or occupy the same as a homestead.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 284. When Homestead Not Partitioned**

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 285. When Homestead Can Be Partitioned**

When the widow dies or sells her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 286. Family Allowance to Widows and Minors**

Immediately after the inventory, appraisalment, and list of claims have been approved, the court shall fix a family allowance for the support of the widow and minor children of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 287. Amount of Family Allowance**

Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 288. When Family Allowance Not Made**

No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 289. Order Fixing Family Allowance**

When an allowance has been fixed, an order shall be entered stating the amount thereof, providing how the same shall be payable, and directing the executor or administrator to pay the same in accordance with law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 290. Family Allowance Preferred**

The family allowance made for the support of the widow and minor children of the deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of the deceased.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 291. To Whom Family Allowance Paid**

The executor or administrator shall apportion and pay the family allowance:

(a) To the widow, if there be one, for the use of herself and the minor children, if such children be hers.

(b) If the widow is not the mother of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which she is not the mother shall be paid to the guardian or guardians of such child or children.

(c) If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

(d) If there be a widow and no minor child or children, the entire allowance shall be paid to the widow.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 292. May Take Property for Family Allowance**

The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisalment; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 293. Sale to Raise Funds for Family Allowance**

If there be no personal property of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisalment, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**PART 4. PRESENTMENT AND PAYMENT OF CLAIMS**

**§ 294. Notice by Representative of Appointment**

(a) **Giving of Notice Required.** Within one month after receiving letters, personal representatives of estates shall publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate being administered to present the same within the time prescribed by law. The notice shall state the time of issuance of letters held by the representative, together with his residence and postoffice address.

(b) **Proof of Publication.** A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this Code for the service of citation or notice by publication, shall be filed in the court where the cause is pending.

(c) **When No Newspaper Printed in the County.** When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 295. Notice to Holders of Recorded Claims**

(a) **When Notice Required.** Within four months after receiving letters, the representative of an es-

tate shall give notice of the issuance of such letters to each and every person having a claim for money against the estate of a decedent, or ward, as the case may be, provided:

(1) That such claim is secured by a deed of trust, mortgage, vendor's, mechanic's or other contractor's lien upon real estate belonging to such estate; and

(2) That the instrument creating, extending, or transferring such lien was duly recorded prior to the death of a testator or intestate in the county in which the real estate covered by such lien is situated, or prior to the time at which title vested in an heir or devisee.

**(b) How Notice Shall Be Given.** The notice stating the original grant of letters shall be given by mailing same by registered letter, with return receipt requested, addressed to the record holder of such indebtedness or claim at his last known postoffice address.

**(c) Proof of Service of Notice.** A copy of such notice, together with the return receipt and an affidavit of the representative, stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed in the court from which letters were issued.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 296. One Notice Sufficient

If the notices required by the two preceding Sections have been given by a former representative, or by one where several are acting, that shall be sufficient, and need not be repeated by any successor or co-representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 297. Penalty for Failure to Give Notice

If the representative fails to give the notices required in preceding Sections, or to cause such notices to be given, he and the sureties on his bond shall be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 298. Claims Against Estates of Decedents and Wards

**(a) Claims Against Decedent's Estate Postponed if not Presented in Six Months.** All claims for money against a testator or intestate shall be presented to the executor or administrator within six months after the original grant of letters testamentary or of administration; otherwise the payment thereof shall be postponed until the claims which have been presented within six months and allowed by the executor or administrator and approved by the court have been first entirely paid; provided, however, that the failure of the holder of a secured claim to present his claim within said six month period shall not cause his claim to be postponed,

but it shall be treated as a claim to be paid in accordance with subsequent provisions of this Code.

**(b) Time for Presentation of Claims to Guardians.** Claims may be presented to the guardian at any time when the estate is not closed and when suit on such claims has not been barred by the general statutes of limitation.

**(c) Claims Barred by Limitation Not to Be Allowed or Approved.** No claims against a decedent or ward, or against the estate of either, on which a suit is barred by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that limitation has run, the claim shall be disapproved.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 2992, ch. 988, § 1, eff. June 15, 1971.]

#### § 299. Tolling of General Statutes of Limitation

The general statutes of limitation are tolled:

(a) By filing a claim which is legally allowed and approved; or

(b) By bringing a suit upon a rejected and disapproved claim within ninety days after such rejection or disapproval.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 300. Claims for Expenses of Funeral and Last Illness

Claims for funeral expenses and expenses of the last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration, and, if they are not presented within such time, the exempted property set apart to the widow and children, and any allowances made to them under the provisions of this Code, shall no longer be liable for the payment of such claims or any part thereof.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 301. Claims Must Be Authenticated

Except as hereinafter provided with respect to the payment of unauthenticated claims by guardians, no personal representative of a decedent's estate or of the estate of a ward shall allow, and the court shall not approve, a claim for money against such estate, unless such claim be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded. A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 302. When Defects of Form Are Waived

Any defect of form, or claim of insufficiency of exhibits or vouchers presented, shall be deemed waived by the personal representative unless written

objection thereto has been made within thirty days after presentment of the claim, and filed with the county clerk.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 303. Evidence Concerning Lost or Destroyed Claims

If evidence of a claim is lost or destroyed, the claimant, or someone for him, may make affidavit to the fact of such loss or destruction, stating the amount, date, and nature of the claim and when due, and that the same is just, and that all legal offsets, payments and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim; and the claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If such claim is allowed or approved without such affidavit, or if it is approved without satisfactory proof, such allowance or approval shall be void.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 304. Authentication of Claim by Others Than Individual Owners

The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of such corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 305. Guardian's Payment of Unauthenticated Claims

A guardian may pay an unauthenticated claim against the estate of his ward which he believes to be just, but he and the sureties on his bond shall be liable for the amount of any such payment in the event the court should find that such claim is not just.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 306. Method of Handling Secured Claims

(a) **Specifications of Claim.** When a secured claim against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(1) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) Whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the

terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.

(b) **Handling of Secured Claims Not Presented in Time.** If a secured claim is not presented within the time provided by law, it shall be treated as a claim to be paid in accordance with Paragraph (2) of Subsection (a) hereof.

(c) **Approved Claim as Preferred Lien Against Property.** When an indebtedness has been allowed and approved under Paragraph (2) of Subsection (a) hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior to final maturity and payment of the debt.

(d) **Payment of Maturities on Secured Claims.** If property securing a claim allowed, approved, and fixed under Paragraph (2) of Subsection (a) hereof is not sold or distributed within twelve months from the date letters testamentary or of administration or guardianship are granted, the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same. If the representative defaults in such payment or performance, on motion of the claimholder, the court shall require the sale of said property subject to the unmaturing part of such debt and apply the proceeds of the sale to the liquidation of the maturities, or, at the option of the claimholder, a motion may be made in a like manner to require the sale of said property free of such lien and to apply the proceeds to the payment of the whole debt.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 307. Claims Providing for Attorney's Fees

If the instrument evidencing or supporting a claim provides for attorney's fees, then the claimant may include as a part of the claim the portion of such fee that he has paid or contracted to pay to an attorney to prepare, present, and collect such claim.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 308. Depositing Claims With Clerk

Claims may also be presented by depositing same, with vouchers and necessary exhibits and affidavit attached, with the clerk, who, upon receiving same, shall advise the representative of the estate, or his attorney, by letter mailed to his last known address, of the deposit of same. Should the representative fail to act on said claim within thirty days after it is filed, then it shall be presumed to be rejected. Failure of the clerk to give notice as required herein shall not affect the validity of the presentment or

the presumption of rejection because not acted upon within said thirty day period.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 309. Memorandum of Allowance or Rejection of Claim

When a duly authenticated claim against an estate is presented to the representative, or filed with the clerk as heretofore provided, he shall, within thirty days after the claim is presented or filed, endorse thereon, or annex thereto, a memorandum signed by him, stating the time of presentation or filing of the claim, and that he allows or rejects it, or what portion thereof he allows or rejects.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 310. Failure to Endorse or Annex Memorandum

The failure of a representative of an estate to endorse on, or annex to, a claim presented to him, his allowance or rejection thereof within thirty days after the claim was presented, shall constitute a rejection of the claim. If the claim is thereafter established by suit, the costs shall be taxed against the representative, individually, or he may be removed on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof, as in other cases of removal.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 311. When Claims Entered in Docket

(a) **Claims Against Estates of Decedents.** If a claim against the estate of a decedent has been presented within six months after the issuance of original testamentary letters or of administration, and all or part of such claim is allowed by the executor or administrator, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter the same in its proper place upon the claim docket. If such claim is not so presented within such time, the payment thereof, should it be approved in whole or in part, shall be postponed until all other claims which have been presented, allowed, and approved within the time prescribed have been first entirely paid.

(b) **Claims Against Estates of Wards.** After a claim against a ward's estate has been presented to and allowed by the guardian, either in whole or in part, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter it on the claim docket.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 2992, ch. 988, § 2, eff. June 15, 1971.]

### § 312. Contest of Claims, Action by Court, and Appeals

(a) **Contest of Claims.** Any person interested in an estate or ward may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) **Court's Action Upon Claims.** All claims which have been allowed and entered upon the claim docket for a period of ten days shall be acted upon by the court and be either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

(c) **Hearing on Claims.** Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, he shall examine the claimant and the personal representative under oath, and hear other evidence necessary to determine the issue. If not then convinced that the claim is just, he shall disapprove it.

(d) **Order of the Court.** When the court has acted upon a claim, he shall also endorse thereon, or annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim. Such orders shall have the force and effect of final judgments.

(e) **Appeal.** When a claimant or any person interested in an estate or ward shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the district court, as from other judgments of the county court in probate matters.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be certified within thirty days after rendition and filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 314. Presentation of Claims a Prerequisite for Judgment

No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate or ward, and rejected by him or by the court, in whole or in part.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 315. Costs of Suit With Respect to Claims

All costs incurred in the probate court with respect to claims shall be taxed as follows:

(a) If allowed and approved, the estate shall pay the costs.

(b) If allowed, but disapproved, the claimant shall pay the costs.

(c) If rejected, but established by suit, the estate shall pay the costs.

(d) If rejected, but not established by suit, the claimant shall pay the costs.

(e) In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, he shall pay all costs.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 316. Claims Against Executors or Administrators**

The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator is indebted to his testator or intestate, he shall account for the debt in the same manner as if it were cash in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall be required to account for it only from the date when it becomes due.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 317. Claims by Personal Representatives**

(a) **By Executors or Administrators.** The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred.

(b) **By Guardians.** A claim which the guardian held against the ward or his estate at the time of his appointment, or which has since accrued, shall be verified by affidavit as required in other cases, and presented to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket, after which it shall take the same course as other claims.

(c) **Action on Such Claims.** When a claim by an executor, administrator, or guardian has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.

(d) **Provisions Not Applicable to Certain Claims.** The foregoing provisions relative to the presentment of claims shall not be so construed as to apply to the claim of any heir, devisee, or legatee who claims in such capacity, or to any claim that accrues against the estate after the granting of letters for which the representative of the estate has contracted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 318. Claims Not Allowed After Order for Partition and Distribution**

No claim for money against his testator or intestate shall be allowed by an executor or administrator and no suit shall be instituted against him on any such claim, after an order for partition and distribution has been made; but, after such an order has been made, the owner of any claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees, or legatees of the estate, limited to the value of the property received by them in such partition and distribution.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 319. Claims Not to Be Paid Unless Approved**

Except as provided for payment at his own risk by a guardian of an unauthenticated claim, no claim for money against the estate of a decedent or ward, or any part thereof, shall be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 320. Order of Payment of Claims**

(a) **Estates of Decedents.** Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed One Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safe-keeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) **Estates of Wards.** The guardian shall pay all claims against the estate of his ward that have been allowed or approved, or established by suit, as soon as practicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 320A. Funeral Expenses**

When executors, independent executors and administrators pay claims for funeral expenses and for items incident thereto, such as tombstones, grave markers, crypts or burial plots, they shall charge the whole of such claims to the decedent's estate and shall charge no part thereof to the community share of a surviving spouse.

[Acts 1967, 60th Leg., p. 768, ch. 321, § 1, eff. May 27, 1967.]

**§ 321. Deficiency of Assets**

When there is a deficiency of assets to pay all claims of the same class, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No executor, administrator, or guardian shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 322. Classification of Claims Against Estates of Decedents**

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed One Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 5. All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 2992, ch. 988, § 3, eff. June 15, 1971.]

**§ 323. Joint Obligation**

When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of any of the persons so bound, his estate shall be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 324. Representatives Not to Purchase Claims**

It shall be unlawful, and cause for removal, for an executor, administrator, or guardian, whether acting under appointment by will or under orders of the court, to purchase for his own use or for any purposes whatsoever, any claim against the estate he represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate;

and the judge may, in his discretion, remove such representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 325. Proceeds of Sale of Mortgaged Property**

Whenever a personal representative has in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, he shall pay such proceeds to the holder or holders of such mortgage or other liens; and, if he shall fail to do so, such holder or holders, upon proof thereof, may obtain an order from the court directing such payment to be made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 326. Owner May Obtain Order for Payment**

Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 327. Claims Presented Against Estate of Decedent After Six Months**

Unsecured claims against the estate presented to an executor or administrator after the expiration of six months from the original grant of letters, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what is sufficient to pay all debts of every kind against the estate that were presented within the six months and allowed and approved or established by judgment, or that shall be so established; and an order for the payment of any such claim may be obtained from the court, upon proof that the executor or administrator has such funds, in like manner as is provided in this Code for other creditors to obtain payment.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1971, 62nd Leg., p. 2993, ch. 988, § 4, eff. June 15, 1971.]

**§ 328. Liability for Nonpayment of Claims**

(a) **Procedure to Force Payment.** If any representative of an estate shall fail to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there are

funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execution issued against the property of the estate for the amount due, with interest and costs; or

(b) **Penalty Against Representative.** Upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on his bond to show cause why they should not be held liable for such debt, interest, costs, and damages. Upon return of citation duly served, if good cause to the contrary be not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs, and also for damages upon the amount neglected to be paid, at the rate of five per cent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

§ 329. **Borrowing Money**

(a) **Circumstances Under Which Money May Be Borrowed.** Any real or personal property of an estate may be mortgaged or pledged by deed of trust or otherwise as security for an indebtedness, under order of the court, when necessary for any of the following purposes:

(1) For the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes upon the transfer of an estate or due from a decedent or ward or his estate, regardless of whether such taxes are assessed by a state, or any of its political subdivisions, or by the federal government or by a foreign country; or

(2) For payment of expenses of administration, including sums necessary for operation of a business, farm, or ranch owned by the estate; or

(3) For payment of claims allowed and approved, or established by suit, against the estate; or

(4) To renew and extend a valid, existing lien; or

(5) In the case of guardians of estates, if the real estate of the ward is not revenue producing but could be made revenue producing by certain improvements and repairs, or if the revenue therefrom could be increased by making such improvements or repairs thereon, to make such improvements or repairs; or

(6) In the case of guardians of estates, the probate court in its discretion may authorize the borrowing of money where it is in the best interest of and for the protection of the estate of the ward.

(b) **Procedure for Borrowing Money.** When it is necessary to borrow money for any of the aforementioned purposes, or to create or extend a lien upon property of the estate as security, a sworn application for such authority shall be filed with the court, stating fully and in detail the circumstances which the representative of the estate believes make necessary the granting of such authority. Thereupon, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring such persons, if they choose so to do, to appear and show cause, if any, why such application should not be granted.

(c) **Order Authorizing Such Borrowing, or Extension of Lien.** The court, if satisfied by the evidence adduced at the hearing upon said application that it is to the interest of the estate to borrow money, or to extend and renew an existing lien, shall issue its order to that effect, setting out the terms and conditions of the authority granted; provided, however: (1) that as to the estate of a decedent, the loan or renewal shall not be for a term longer than three years from the granting of original letters to the representative of such estate, but the court may authorize an extension of such lien for not more than one additional year without further citation or notice; and (2) that as to the estate of a ward, the term of the loan or renewal shall be for such length of time as the court shall determine to be for the best interest of such estate. If a new lien is created upon property of an estate, the court may require that the representative's general bond be increased, or an additional bond given, for the protection of the estate and its creditors, as for the sale of real property belonging to the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1973, 63rd Leg., p. 408, ch. 182, § 3, eff. May 25, 1973.]

§ 330. **Notices to Veterans Administration by Guardians**

Whenever an annual or other account, or an application for the expenditure of funds or for the investment of funds is filed by any guardian whose ward is a beneficiary of the Veterans Administration, or when a claim against the estate of such a ward shall be filed, the court shall thereupon fix a date for the hearing of such account, application, petition, or claim, as the case may be, not less than twenty days from the date of the filing thereof. The clerk of the court in which such account, application, petition, or claim shall be filed shall give notice thereof not less than fifteen days prior to the date fixed for such hearing to the Veterans Administration in whose territory the court is located by mailing a certified copy of such account, application, petition, or claim to said office of the Veterans Administration; provided that said Administration may through its attorney waive the service of such notice and also the time within which a hearing may be had in such cases. Such account, application, petition, or claim shall be filed in duplicate, and the clerk of the court shall be entitled to a fee of Twenty-five Cents, taxable against the estate, for certifying to the copy

thereof, which he shall forthwith mail to said Administration as provided herein. If not filed in duplicate, the clerk shall be entitled to a further fee of Fifteen Cents per one hundred words for making a copy thereof. Such additional costs of copying shall be taxed and collected from the guardian individually, and shall not be chargeable to the ward's estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### PART 5. SALES

##### § 331. Court Must Order Sales

Except as hereinafter provided, no sale of any property of an estate shall be made without an order of court authorizing the same. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specially provided herein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 332. Sales Authorized by Will

Whenever by the terms of a will an executor is authorized to sell any property of the testator, no order of court shall be necessary to authorize the executor to make such sale, and the sale may be made at public auction or privately as the executor deems to be in the best interest of the estate and may be made for cash or upon such credit terms as the executor shall determine; provided, that when particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 333. Certain Personal Property to Be Sold

The representative of an estate, after approval of inventory and appraisal, shall promptly apply for an order of the court to sell at public auction or privately, for cash or on credit not exceeding six months, all of the estate that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept. Bonds, securities, or other personal property deemed by the court not to be so liable, property exempt from forced sale, specific legacies, and personal property necessary to carry on a farm, ranch, factory, or any other business which it is thought best to operate, shall not be included in such sales.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 334. Sales of Other Personal Property

Upon application by the personal representative of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by the preceding Section, including growing or harvested crops or livestock, but not including exempt property or specific legacies, if the court finds that so to do would be in the

best interest of the estate in order to pay expenses of administration, funeral expenses, expenses of last illness, allowances, or claims against the estate, from the proceeds of the sale of such property. In so far as possible, applications and orders for the sale of personal property shall conform to the requirements hereinafter set forth for applications and orders for the sale of real estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 335. Special Provisions Pertaining to Livestock

When the personal representative of an estate has in his possession any livestock which he deems necessary or to the advantage of the estate to sell, he may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell such livestock through a bonded livestock commission merchant, or a bonded livestock auction commission merchant. Such authority may be granted by the court upon written and sworn application by the personal representative, or by any person interested in the estate, describing the livestock sought to be sold, and setting out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted. The court shall forthwith consider any such application, and may, in its discretion, hear evidence for or against the same, with or without notice, as the facts warrant. If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid his usual and customary charges, not to exceed three per cent of the sale price, for the sale of such livestock. A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 336. Sales of Personal Property at Public Auction

All sales of personal property at public auction shall be made after notice has been issued by the representative of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 337. Sales of Personal Property on Credit

No more than six months credit may be allowed when personal property is sold at public auction, based upon the date of such sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of such property can be made to him, but

security may be waived if delivery is not to be made until the note, with interest, has been paid.  
 [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 338. Sale of Mortgaged Property**

Any creditor holding a claim secured by a valid mortgage or other lien, which has been allowed and approved or established by suit, may obtain from the court in which the estate is pending an order that said property, or so much thereof as necessary to satisfy his claim, shall be sold, by filing his written application therefor. Upon the filing of such application, the clerk shall issue citation requiring the representative of the estate to appear and show cause why such application should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, he may so order; otherwise, he shall grant the application and order that the property be sold at public or private sale, as deemed best, as in ordinary cases of sales of real estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 339. Sales of Personal Property to Be Reported; Decree Vests Title**

All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the intestate or ward in the purchaser who has complied with the terms of the sale, and shall be prima facie evidence that all requirements of the law in making the sale have been met. The representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 340. Selection of Real Property to Be Sold for Payment of Debts**

Real property of the estate which is selected to be sold for the payment of expenses or claims shall be that which the court deems most advantageous to the estate to be sold.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 341. Application for Sale of Real Estate**

(a) Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.

(6) Dispose of property of the estate of a decedent which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(b) Any natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell property of a minor without being appointed guardian, when the value of the property does not exceed \$1,500. A sale of property pursuant to an order of the court under the subsection is not subject to disaffirmance by the minor.

(c) Such parent shall make application to the court for the sale of such property. The application shall contain the following information:

(1) A legal description of the property.

(2) The name of the minor, or minors and his interest in the property.

(3) The name of the purchaser.

(4) That such sale of the minor's interest is for cash.

(5) That all funds received by the parent shall be used for the use and benefit of such minor.

(d) The court shall upon receipt of such application set the same for hearing at a date not less than five days from date of filing of such application, and if it deems necessary may cause citation to be issued.

(e) At the time of the hearing of said application, the court shall order the sale of such property, if it is satisfied from the evidence that the sale is in the best interest of said minor.

(f) When the order of sale has been entered by the court, the purchaser of such property shall pay the proceeds of such sale belonging to said minor or minors into the registry of the court.

(g) Nothing in this section shall prevent the proceeds so deposited from being withdrawn from the registry of the court under Section 144 of the Texas Probate Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan., 1, 1956; Acts 1969, 61st Leg., p. 2030, ch. 695, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 408, ch. 182, § 4, eff. May 25, 1973.]

### § 342. Contents of Application for Sale of Real Estate

An application for the sale of real estate shall be in writing, shall describe the real estate or interest in or part thereof sought to be sold, and shall be accompanied by an exhibit, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit, or that have been rejected and may yet be established, the amount of each such claim, the property of the estate remaining on hand liable for the payment of such claims, and any other facts tending to show the necessity or advisability of such sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 343. Setting of Hearing on Application

Whenever an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk, and the judge shall designate a day for hearing said application, any opposition thereto, and any application for the sale of other land, together with the evidence pertaining thereto. The judge may, by entries on the docket, continue such hearing from time to time until he is satisfied concerning the application.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 344. Citation and Return on Application

Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land or interest or part thereof sought to be sold, requiring them to appear at the time set by the court as shown in the citation and show cause why the sale should not be made, if they so elect. Service of such citation shall be by posting.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 345. Opposition to Application

When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 346. Order of Sale

If satisfied upon hearing that the sale of the property of the estate described in the application is necessary or advisable, the court shall order the sale to be made; otherwise, the court may deny the application and may, if it deems best, order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate shall specify:

(a) The property to be sold, giving such description as will identify it; and

(b) Whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale; and

(c) The necessity or advisability of the sale and its purpose; and

(d) Except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the same to be insufficient and specifies the necessary or increased bond, as the case may be; and

(e) That the sale shall be made and the report returned in accordance with law; and

(f) The terms of the sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 347. Procedure When Representative Neglects to Apply for Sale

When the representative of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved, or established by suit, any interested person may, upon written application, cause such representative to be cited to appear and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered. Upon hearing such application, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy such claims, it shall enter an order of sale as provided in the preceding Section.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 348. Permissible Terms of Sale of Real Estate

(a) **For Cash or Credit.** The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public or private sale, as appears to the court to be for the best interest of the estate. When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semi-annual or annual installments, of such amounts as appears to the court to be for the best interest of the estate, to bear interest from date at a rate of not less than four percent (4%) per annum, payable as provided in such note. Default in the payment of principal or interest, or any part thereof when due, shall, at the election of the holder of such note, mature the whole debt. Such note shall be secured by vendor's lien retained in the deed and in the note upon the property sold, and be further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes.

(b) **Reconveyance Upon Redemption.** When an estate owning real estate by virtue of foreclosure of vendor's lien or mortgage belonging to the estate, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by acceptance of a deed in cancellation of a lien or mortgage owned

by the estate, and it appears to the court that an application to redeem the property foreclosed upon has been made by the former owner of the real estate to any corporation or agency now created or hereafter to be created by any Act or Acts of the Congress of the United States or of the State of Texas in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appears to the court that it would be to the best interest of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may order reconveyance of the property to the former mortgage debtor, or former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named is under its rules and regulations allowed to advance, and, upon obtaining such an order, it shall be proper for the representative to indorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 56th Leg., p. 636, ch. 290, § 1.]

#### § 349. Public Sales of Real Estate

(a) **Notice of Sale.** Except as hereinafter provided, all public sales of real estate shall be advertised by the representative of the estate by a notice published in the county in which the estate is pending, as provided in this Code for publication of notices or citations. Reference shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold shall be given. It need not contain field notes, but if rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known, if any, shall be given.

(b) **Method of Sale.** All public sales of real estate shall be made at public auction to the highest bidder.

(c) **Time and Place of Sale.** All such sales shall be made in the county in which the proceedings are pending, at the courthouse door of said county, or other place in such county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice shall have been completed, between the hours of ten o'clock A.M. and four o'clock P.M., provided, that if deemed advisable by the court, he may order such sale to be made in the county in which the land is situated, in which event notice shall be published both in such county and in the county where the proceedings are pending.

(d) **Continuance of Sales.** If sales are not completed on the day advertised, they may be continued from day to day by making public announcement

verbally of such continuance at the conclusion of the sale each day, such continued sales to be within the same hours as hereinbefore prescribed. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) **Failure of Bidder to Comply.** When any person shall bid off property of an estate offered for sale at public auction, and shall fail to comply with the terms of sale, such property shall be readvertised and sold without any further order; and the person so defaulting shall be liable to pay to the representative of the estate, for its benefit, ten per cent of the amount of his bid, and also any deficiency in price on the second sale, such amounts to be recovered by such representative by suit in any court having jurisdiction of the amount claimed, in the county in which the sale was made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 350. Private Sales of Real Estate

All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 351. Sales of Easements and Right of Ways

It shall be lawful to sell and convey easements and rights of ways on, under, and over the lands of an estate being administered under orders of a court, regardless of whether the proceeds of such a sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for such sales shall be the same as now or hereafter provided by law for sales of real property of estates of decedents or wards at private sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 352. Representative Not to Purchase Property of the Estate

The personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him, or by any co-representative if one be acting. If any such purchase is made, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 353. Reports of Sale

All sales of real property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. Reports shall be in

writing, sworn to, and filed with the clerk, and noted on the probate docket. They shall show:

- (a) The date of the order of sale.
- (b) The property sold, describing it.
- (c) The time and place of sale.
- (d) The name of the purchaser.
- (e) The amount for which each parcel of property or interest therein was sold.
- (f) The terms of the sale, and whether made at public auction or privately.
- (g) Whether the purchaser is ready to comply with the order of sale.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 354. Bond on Sale of Real Estate

If the personal representative of the estate is not required by this Code to furnish a general bond, the sale may be confirmed by the court if found to be satisfactory and in accordance with law. Otherwise, before any sale of real estate is confirmed, the court shall determine whether the general bond of said representative is sufficient to protect the estate after the proceeds of the sale are received. If the court so finds, the sale may be confirmed. If the general bond be found insufficient, the sale shall not be confirmed until and unless the general bond be increased to the amount required by the court, or an additional bond given, and approved by the court. The increase, or the additional bond, shall be equal to the amount for which such real estate is sold, plus, in either instance, such additional sum as the court shall find necessary and fix for the protection of the estate; provided, that where the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of such secured claim and is in full payment, liquidation, and satisfaction thereof, no increased general bond or additional bond shall be required except for the amount of cash, if any, actually paid to the representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy such claim in full.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was

for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed by the District Court, as in other final judgments in probate proceedings.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 356. Deed Conveys Title to Real Estate

When real estate is sold, the conveyance shall be by proper deed which shall refer to and identify the decree of the court confirming the sale. Such deed shall vest in the purchaser all right, title, and interest of the estate to such property, and shall be prima facie evidence that said sale has met all applicable requirements of the law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 357. Delivery of Deed, Vendor's and Deed of Trust Lien

After a sale is confirmed by the court and the terms of sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing the purchase money note or notes shall be expressly retained in said deed, and in no event waived, and before actual delivery of said deed to purchaser, he shall execute and deliver to the representative of the estate a vendor's lien note or notes, with or without personal sureties as the court shall have ordered, and also a deed of trust or mortgage on the property as further security for the payment of said note or notes. Upon completion of the transaction, the personal representative shall promptly file or cause to be filed and recorded in the appropriate records in the county where the land is situated said deed of trust or mortgage.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 358. Penalty for Neglect

Should the representative of an estate neglect to comply with the preceding Section, or to file the deed of trust securing such lien in the proper county, he and the sureties on his bond shall, after complaint and citation, be held liable for the use of the estate, for all damages resulting from such neglect, which damages may be recovered in any court of competent jurisdiction, and he may be removed by the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### PART 6. HIRING AND RENTING

#### § 359. Hiring or Renting Without Order of Court

The personal representative of an estate may, without order of court, rent any of its real property or hire out any of its personal property, either at public auction or privately, as may be deemed in the

best interest of the estate, for a period not to exceed one year.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 360. Liability of Personal Representative

If property of the estate is hired or rented without an order of court, the personal representative shall be required to account to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court upon satisfactory evidence, upon sworn complaint of any person interested in the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 361. Order to Hire or Rent

Representatives of estates, if they prefer, may, and, if the proposed rental period exceeds one year, shall, file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be to the interest of the estate, he shall grant the application and issue an order which shall describe the property to be hired or rented, state whether such hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of same and the period for which the property may be rented. If to be hired or rented at public auction, the court shall also prescribe whether notice thereof shall be published or posted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 362. Procedure in Case of Neglect to Rent Property

Any person interested in an estate may file his written and sworn complaint in a court where such estate is pending, and cause the personal representative of such estate to be cited to appear and show cause why he did not hire or rent any property of the estate, and the court, upon hearing such complaint, shall make such order as seems for the best interest of the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 363. When Property is Hired or Rented on Credit

When property is hired or rented on credit, possession thereof shall not be delivered until the hirer or renter has executed and delivered to the representative of the estate a note with good personal security for the amount of such hire or rent; and, if any such property so hired or rented is delivered without receiving such security, the representative and the sureties on his bond shall be liable for the full amount of such hire or rent; provided, that when the hire or rental is payable in installments, in advance of the period of time to which they relate, this Section shall not apply.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 364. Property Hired or Rented to Be Returned in Good Condition

All property hired or rented, with or without an order of court, shall be returned to the possession of

the estate in as good condition, reasonable wear and tear excepted, as when hired or rented, and it shall be the duty and responsibility of the representative of the estate to see that this is done, to report to the court any loss, damage or destruction of property hired or rented, and to ask for authority to take such action as is necessary; failing so to do, he and the sureties on his bond shall be liable to the estate for any loss or damage suffered through such fault.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 365. Report of Hiring or Renting

(a) When any property of the estate with an appraised value of Three Thousand Dollars or more has been hired or rented, the representative shall, within thirty days thereafter, file with the court a sworn and written report, stating:

- (1) The property involved and its appraised value.
- (2) The date of hiring or renting, and whether at public auction or privately.
- (3) The name of the person or persons hiring or renting such property.
- (4) The amount of such hiring or rental.
- (5) Whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken therefor.

(b) When the value of the property involved is less than Three Thousand Dollars, the hiring or renting thereof may be reported upon in the next annual or final account which shall be filed as required by law.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 366. Action of Court on Report

At any time after five days from the time such report of hiring or renting is filed, it shall be examined by the court and approved and confirmed by order of the court if found just and reasonable; but, if disapproved, the estate shall not be bound and the court may order another offering of the property for hire or rent, in the same manner and subject to the same rules heretofore provided. If the report has been approved and it later appears that, by reason of any fault of the representative of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the representative of the estate and his sureties to appear and show cause why the reasonable value of hire or rent of such property shall not be adjudged against him.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 7. MINERAL LEASES, POOLING OR UNITIZATION AGREEMENTS, AND OTHER MATTERS RELATING TO MINERAL PROPERTIES

### § 367. Mineral Leases After Public Notice

(a) **Certain Words and Terms Defined.** As used throughout in this Part of this Chapter, the words

"land" or "interest in land" include minerals or any interest in any of such minerals in place. The word "property" includes land, minerals in place, whether solid, liquid or gaseous, as well as an interest of any kind in such property, including royalty, owned by the estate. "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

**(b) Mineral Leases, With or Without Pooling or Unitization.** Personal representatives of the estates of decedents, minors, and incompetents, appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of such minerals in place, belonging to such estates.

**(c) Rules Concerning Applications, Orders, Notices, and Other Essential Matters.** All such leases, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with the following rules:

**1. Contents of Application.** The representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application, addressed to the court or the judge of such court, asking for authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The application shall (a) describe the property fully enough by reference to the amount of acreage, the survey name or number, or abstract number, or other description adequately identifying the property and its location in the county in which situated; (b) specify the interest thought to be owned by the estate, if less than the whole, but asking for authority to include all interest owned by the estate, if that be the intention; and (c) set out the reasons why such particular property of the estate should be leased. Neither the name of any proposed lessee, nor the terms, provisions, or form of any desired lease, need be set out or suggested in any such application for authority to lease for mineral development.

**2. Order Designating Time and Place for Hearing Application.**

**(a) Duties of Clerk and Judge.** When an application to lease, as above prescribed, is filed, the county clerk shall immediately call the filing of such application to the attention of the court, and the judge shall

promptly make and enter a brief order designating the time and place for the hearing of such application.

**(b) Continuance of Hearing.** If the hearing is not had at the time originally designated by the court or by timely order or orders of continuance duly entered, then, in such event, the hearing shall be automatically continued, without further notice, to the same hour or time the following day (except Sundays and holidays on which the county courthouse is officially closed to business) and from day to day until the application is finally acted upon and disposed of by order of the court. No notice of such automatic continuance shall be required.

**3. Notice of Application to Lease, Service of Notice, and Proof of Service.**

**(a) Notice and Its Contents.** The personal representative, and not the county clerk, shall give notice in writing of the time designated by the judge for the hearing on the application to lease. The notice shall be directed to all persons interested in the estate. It shall state the date on which the application was filed, describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified, state the time and place designated by the judge for the hearing, and be dated.

**(b) Service of Notice.** The personal representative shall give at least ten days notice, exclusive of the date of notice and of the date set for hearing, by publication in one issue of a newspaper of general circulation in the county in which the proceeding is pending, or, if there be no such newspaper, then by posting by the personal representative or at his instance. The date of notice when published shall be the date the newspaper bears.

**4. Preceding Requirements Mandatory.** In the absence of: (a) a written order originally designating a time and place for hearing; (b) a notice issued by the personal representative of the estate in compliance with such order; and (c) proof of publication or posting of such notice as required, any order of the judge or court authorizing any acts to be performed pursuant to said application shall be null and void.

**5. Hearing on Application to Lease and Order Thereon.** At the time and place designated for the hearing, or at any time to which it shall have been continued as hereinabove provided, the judge shall hear such application, requiring proof as to the necessity or advisability of leasing for mineral development the property described in the application and in the notice; and, if he is satisfied that the application is in due

form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, then an order shall be entered so finding, and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) affecting and covering the property, or portions thereof, described in the application. Said order authorizing leasing shall also set out the following mandatory contents:

- (a) The name of the lessee.
- (b) The actual cash consideration, if any, to be paid by the lessee.
- (c) Finding that the personal representative is exempted by law from giving bond, if that be a fact and if not a fact, then a finding as to whether or not the representative's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid, if any. If the court finds the general bond insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency.

(d) A complete exhibit copy, either written or printed, of each lease thus authorized to be made, shall either be set out in the order or attached thereto and incorporated by reference in said order and made a part thereof. It shall show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized; provided, that if no date of the lease appears in such exhibit copy, or in the court's order, then the date of the court's order shall be considered for all purposes as the date of the authorized lease, and if the name and address of the depository bank, or either of them, for receiving rental is not shown in said exhibit copy, the same may be inserted or caused to be inserted in the lease by the estate's personal representative at the time of its execution, or at any other time agreeable to the lessee, his successors, or assigns.

**6. Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed.** If, upon the hearing of an application for authority to lease, the court shall grant the same as above provided, the personal representative of the estate shall then be fully authorized to make, within thirty days after date of the judge's order, but not afterwards unless an extension be granted by the court upon sworn application showing good cause, the lease or leases as evidenced by the aforesaid true exhibit copies, in accordance with said order; but, unless the personal representative is not required to give a general bond, no such lease, for which

a cash consideration is required, though ordered, executed, and delivered, shall be valid unless the order authorizing same actually makes findings with respect to the general bond, and, in case such bond has been found insufficient, then unless and until the bond has been increased, or an additional bond given, as required by the court's order, with the sureties required by law, has been approved by the judge and filed with the clerk of the court in which the proceedings are pending. In the event two or more leases on different lands are authorized by the same order, the general bond shall be increased, or additional bonds given, to cover all. It shall not be necessary for the judge to make any order confirming such leases.

**7. Term of Lease Binding.** Every such lease, when executed and delivered in compliance with the rules hereinabove set out, shall be valid and binding upon the property or interest therein owned by the estate and covered by the lease for the full duration of the term as provided therein, subject only to its terms and conditions, even though the primary term shall extend beyond the date when the estate shall have been closed in accordance with law; provided the authorized primary term shall not exceed five (5) years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells, with no cessation of operations of more than sixty (60) consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well.

**7(a). Validation of Certain Provisions of Leases Heretofore Executed by Personal Representatives.** As to any valid mineral lease heretofore executed and delivered in compliance with the provisions of the Texas Probate Code and which lease is still in force, any provisions of any such lease continuing such lease in force after its five (5) year primary term by a shut-in gas well are hereby validated; provided, however, that this provision shall not be applicable to any such provision of any such lease which is involved in any lawsuit pending in this state on the effective date of this Act wherein the validity of such provision is an issue.

**8. Amendment of Leases.** Any oil, gas, and mineral lease heretofore or hereafter executed by a personal representative pursuant to the Texas Probate Code may be amended by an instrument which provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part thereof shall continue such lease in force after its five (5) year primary term. Such instrument shall be executed by the personal representative, with the

approval of the court, and on such terms and conditions as may be prescribed therein.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 10(a), eff. Aug. 22, 1957; Acts 1961, 57th Leg., p. 441, ch. 215, § 1, eff. May 25, 1961; Acts 1961, 57th Leg., p. 441, ch. 215, §§ 2, 3, eff. May 25, 1961.]

### § 368. Mineral Leases at Private Sale

(a) **Authorization Allowed.** Notwithstanding the preceding mandatory requirements for setting a time and place for hearing of an application to lease and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale (without public notice or advertising) if, in the opinion of the court, sufficient facts are set out in the application required above to show that it would be more advantageous to the estate that a lease be made privately and without compliance with said mandatory requirements mentioned above. Leases so authorized may include pooling provisions or unitization clauses as in other cases.

(b) **Action of the Court When Public Advertising Not Required.** At any time after the expiration of five (5) days and prior to the expiration of ten (10) days from the date of filing and without an order setting time and place of hearing, the court shall hear the application to lease at private sale and shall inquire into the manner in which the proposed lease has been or will be made, and shall hear evidence for or against the same; and, if satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms, and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of such lease without the necessity of advertising, notice, or citation, said order complying in all other respects with the requirements essential to the validity of mineral leases as hereinabove set out, as if advertising or notice were required. No order confirming a lease or leases made at private sale need be issued, but no such lease shall be valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 10(b).]

### § 369. Pooling or Unitization of Royalty or Minerals

(a) **Authorization for Pooling or Unitization.** When an existing lease or leases on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals, or any one or more of them, owned by the estate being administered, to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all such minerals, where the court finds that the pool or unit to which the agreement

relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is to the best interest of the estate to execute the agreement. Any agreement so authorized to be executed may, among other things, provide:

(1) That operations incident to the drilling of or production from a well upon any portion of a pool or unit shall be deemed for all purposes to be the conduct of operations upon or production from each separately owned tract in the pool or unit.

(2) That any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, or as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area, if the presence of such shut-in gas well is a ground for continuation of the lease by the terms of said lease.

(3) That the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(4) That the royalties provided for on production from any tract or portion thereof within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement.

(5) That the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned.

(6) That gas obtained from other sources or other lands may be injected into a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) **Procedure for Authorizing Pooling or Unitization.** Pooling or unitization, when not adequately provided for by an existing lease or leases on property owned by the estate, may be authorized by the court in which the proceedings are pending pursuant to and in conformity with the following rules:

(1) **Contents of Application.** The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases

covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the minutes. The clerk shall immediately, after such application is filed, call it to the attention of the judge.

(2) **Notice Not Necessary.** No notice of the filing of such application by advertising, citation, or otherwise, is required.

(3) **Hearing of Application.** A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

(4) **Action of Court and Contents of Order.** If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto; that it is to the best interest of the estate that the agreement be executed; and that the agreement conforms substantially with the permissible provisions of Subsection (a) hereof, he shall enter an order setting out the findings made by him, authorizing execution of the agreement (with or without payment of cash consideration according to the agreement). If cash consideration is to be paid for the agreement, findings as to the necessity of increased or additional bond, as in making of leases upon payment of the cash bonus therefor, shall also be made, and no such agreement shall be valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. The date of the court's order shall be the effective date of the agreement, if not stipulated in such agreement.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1961, 57th Leg., p. 441, ch. 215, § 4, eff. May 25, 1961.]

### § 370. Special Ancillary Instruments Which May Be Executed Without Court Order

As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate prior to the effective date of this Code, or pursuant to its provisions, or by a former owner of land,

minerals, or royalty affected thereby, the personal representative of the estate which is being administered may, without further order of the court, and without consideration, execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of any such lease or leases, and similar instruments pertaining to any such lease or agreement and the property covered thereby.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 10(c).]

### § 371. Procedure When Representative of Estate Neglects to Apply for Authority

When the personal representative of an estate shall neglect to apply for authority to subject property of the estate to a lease for mineral development, pooling or unitization, or to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate may, upon written application filed with the county clerk, cause such representative to be cited to show cause why it is not for the best interest of the estate for such a lease to be made, or such an agreement entered into. The clerk shall immediately call the filing of such application to the attention of the judge of the court in which the probate proceedings are pending, and the judge shall set a time and place for a hearing on the application, and the representative of the estate shall be cited to appear and show cause why the execution of such lease or agreement should not be ordered. Upon hearing, if satisfied from the proof that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative forthwith to file his application to subject such property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedure prescribed with respect to original application to lease, or with respect to original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall then be followed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 372. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes

All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the estates of decedents, minors, persons of unsound mind, or habitual drunkards, and all agreements with respect to pooling, or unitization thereof, or one or more of them, or any interest therein, with like properties of others, including agreements contemplated or authorized to be made under the terms of Section 3, Article 6008-b, Vernon's Texas Revised Civil Statutes of 1925, as amended, having been authorized by the court having venue, and executed and delivered by the executors, administrators,

guardians, or other fiduciaries of their estates in substantial conformity to the rules set forth in statutes heretofore existing, providing for only seven days notice in some instances, and also for a brief order designating a time and place for hearing, are hereby validated in so far as said period of notice is concerned, and in so far as the absence of any order setting a time and place for hearing is concerned; provided, this shall not apply to any lease or pooling or unitization agreement involved in any suit pending on the effective date of this Code wherein either the length of time of said notice or the absence of such order is in issue.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 8. PARTITION AND DISTRIBUTION OF ESTATES OF DECEDENTS

### § 373. Application for Partition and Distribution of Estates of Decedents

(a) **Who May Apply.** At any time after the expiration of twelve months after the original grant of letters testamentary or of administration, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request the partition and distribution of the estate.

(b) **Contents of Application.** The application shall state:

(1) The name of the person whose estate is sought to be partitioned and distributed; and

(2) The names and residences of all persons entitled to shares of such estate, and whether adults or minors; and, if these facts be unknown to the applicant, it shall be so stated in the application; and

(3) The reasons why partition and distribution should be had.

(c) **Partial Distribution.** At any time after the original grant of letters testamentary or of administration, and the filing and approval of the inventory, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request a distribution of any portion of the estate. All interested parties shall be personally cited, as in other distributions, including known creditors. The court may upon proper citation and hearing distribute any portion of the estate it deems advisable. In the event a distribution is to be made to one or more heirs or devisees, and not to all the heirs or devisees, the court shall require a refunding bond in an amount to be determined by the court to be filed with the court and, upon its approval, the court shall order the distribution of that portion of the estate, unless such requirement is waived in writing and the waiver is filed with the court by all interested parties. This section shall apply to corpus as well as income, notwithstanding any other provisions of this Code.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1973, 63rd Leg., p. 408, ch. 182, § 2, eff. May 25, 1973.]

### § 374. Citation of Interested Persons

Upon the filing of such application, the clerk shall issue a citation which shall state the name of the person whose estate is sought to be partitioned and distributed, and the date upon which the court will hear the application, and the citation shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. Such citation shall be personally served upon each person residing in the state entitled to a share of the estate whose address is known; and, if there be any such persons whose identities or addresses are not known, or who are not residents of this state, or are residents of but absent from this state, such citation shall be served by publication.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 375. Citation of Executor or Administrator

When application for partition and distribution is made by any person other than the executor or administrator, such representative shall also be cited to appear and answer the application and to file in court a verified exhibit and account of the condition of the estate, as in the case of final settlements.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 376. Guardians Ad Litem to Be Appointed in Certain Cases

Where there are minors, or persons of unsound mind, having no guardian in this state, who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the court shall appoint a guardian ad litem to represent such minors, or persons of unsound minds and the court shall appoint an attorney to represent non-residents and unknown parties having an interest in the estate, if there be any. If a guardian ad litem or attorney so appointed shall neglect to attend to the duties of such appointment, the court shall appoint others in their places; and such guardian ad litem and attorney shall be allowed by the court a reasonable compensation for their services, to be paid out of the estate of the person they represent, and if such an allowance is not paid, an execution may issue therefor in the name of the person entitled thereto.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 377. Facts to Be Ascertained Upon Hearing

At the hearing upon the application for partition and distribution, the court shall ascertain:

(a) The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, but not paid, or which may yet be established by judgment, and also the probable future expenses of administration.

(b) The persons who are by law entitled to partition and distribution, and their respective shares.

(c) Whether advancements have been made to any of the persons so entitled and their nature and value. If advancements have been made, the court shall require the same to be placed in hotchpotch as required by the law governing intestate succession.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 378. Decree of the Court**

If the court is of the opinion that the estate should be partitioned and distributed, it shall enter a decree which shall state:

(a) The name and address, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the names of their guardians, or the guardians ad litem, and the name of the attorney appointed to represent those who are unknown or who are not residents of the state.

(b) The proportional part of the estate to which each is entitled.

(c) A full description of all the estate to be distributed.

(d) That the executor or administrator retain in his hands for the payment of all debts, taxes, and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 379. Partition When Estate Consists of Money or Debts Only**

If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and shall order the payment and delivery thereof by the executor or administrator.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 380. Partition and Distribution When Property is Capable of Division**

(a) **Appointment of Commissioners.** If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition.

(b) **Writ of Partition and Service Thereof.** When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also command them to make due return of said writ, with their proceedings under it, on a date named in the writ. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or other-

wise, of their appointment, and such service may be made by any person.

(c) **Partition by Commissioners.** The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order:

(1) Of the land or other property, by allotting to each distributee a share in each parcel or shares in one or more parcels, or one or more parcels separately, either with or without the addition of a share or shares of other parcels, as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

(2) If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as nearly as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

(3) The commissioners shall proceed to make a like division in kind, as nearly as may be, of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

(d) **Report of Commissioners.** The commissioners, having divided the whole or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee, and its value. If it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and with the number of acres in each share. The report of a majority of the commissioners shall be sufficient.

(e) **Action of the Court.** Upon the return of such report, the court shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; otherwise, the court may set aside said report and division and order a new partition to be made.

(f) **Delivery of Property.** When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

(g) **Fees of Commissioners.** Commissioners thus appointed who actually serve in partitioning and

distributing an estate shall be entitled to receive Five Dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 381. Partition and Distribution When Property of an Estate Is Incapable of Division**

(a) **Finding by the Court.** When, in the opinion of the court, the whole or any portion of an estate is not capable of a fair and equal partition and distribution, the court shall make a special finding in writing, specifying therein the property incapable of division.

(b) **Order of Sale.** When the court has found that the whole or any portion of the estate is not capable of fair and equal division, it shall order a sale of all property which it has found not to be capable of such division. Such sale shall be made by the executor or administrator in the same manner as when sales of real estate are made for the purpose of satisfying debts of the estate, and the proceeds of such sale, when collected, shall be distributed by the court among those entitled thereto.

(c) **Purchase by Distributee.** At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as exceeds the amount of his share of such property.

(d) **Applicability of Provisions Relating to Sales of Real Estate.** The provisions of this Code relative to reports of sales of real estate, the giving of an increased general or additional bond upon sales of real estate, and to the vesting of title to the property sold by decree or by deed, shall also apply to sales made under this Section.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 382. Property Located in Another County**

(a) **Court May Order Sale.** When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the court in writing; whereupon, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, the court may order a sale thereof, which sale shall be conducted in the same manner as is provided in this Code for the sale of property which is not capable of fair and equal division.

(b) **Court May Appoint Additional Commissioners.** If the court is not satisfied that such property cannot be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as are provided in this Code for commissioners to make partition.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 383. To Whom Property of a Minor Shall Be Delivered**

If any distributee be a minor, his share of the estate shall be delivered to his guardian. If he has no guardian and is a resident of this state, the executor or administrator shall retain his share until a guardian is appointed or the disability of minority is terminated. If a distributee is a minor and resides out of this state, and has a foreign guardian, the executor or administrator in this state shall settle with and pay or deliver the estate of the minor to such guardian. Said guardian, before he receives such estate, shall have made a bond still in force as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and he shall produce to the court wherein the administration is pending in this state a certified copy of the bond and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form and in force and effect under the laws of said state; and, if the court shall be satisfied that said guardian has been legally appointed and has otherwise complied with the requirements herein, the court shall order all instruments submitted to it pursuant to the provisions of this Section to be recorded in the office of the county clerk, whereupon the guardian shall settle for the amount due his ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 384. Damages for Neglect to Deliver Property**

If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally on such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of such neglect, the court shall enter an order to that effect, and the representative shall be liable to such complainant in damages at the rate of ten per cent of the amount or appraised value of the share so withheld, per month, for each and every month or fraction thereof that the share is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 385. Partition of Community Property**

(a) **Application for Partition.** When a husband or wife shall die leaving any community property,

the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisal, and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such community property.

**(b) Bond and Action of the Court.** The survivor shall execute and deliver to the judge of said court a bond with a corporate surety or two or more good and sufficient personal sureties, payable to and approved by said judge, for an amount equal to the value of the survivor's interest in such community property, conditioned for the payment of one-half of all debts existing against such community property, and the court shall proceed to make a partition of said community property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this Code respecting the partition and distribution of estates shall apply to such partition so far as the same are applicable.

**(c) Lien Upon Property Delivered.** Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforementioned bond; and any creditor of said community estate may sue in his own name on such bond, and shall have judgment thereon for one-half of such debt as he shall establish, and for the other one-half he shall be entitled to be paid by the executor or administrator of the deceased. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 386. Partition of Property Jointly Owned

Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the court from which letters testamentary or of administration have been granted thereon to have a partition thereof, whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the provisions of this Code in relation to the partition and distribution of estates shall govern partition hereunder, so far as the same are applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 387. Expense of Partition

Expense of partition of the estate of a decedent shall be paid by the distributees pro rata. The portion of the estate allotted each distributee shall be liable for his portion of such expense, and, if not paid, the court may order execution therefor in the names of the persons entitled thereto.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## PART 9. PARTITION OF WARD'S ESTATE IN REALTY

### § 388. Partition of Ward's Interest in Realty

**(a) Agreement upon Partition.** If the estate of a ward owns an interest in real estate in common with

other part owner or owners, and if, in the opinion of the guardian, it is to the best interest of such ward's estate that said real estate be partitioned, the guardian may agree upon a partition with the other part owner or owners, subject to the approval of the court in which the guardianship proceedings are pending.

**(b) Application for Approval of Agreement.** When a guardian has reached an agreement with the other part owner or owners as to how said real estate is to be partitioned, he shall file with the court an application to have such agreement approved. The application shall describe the land to be divided and shall state why it is to the best interest of the ward's estate that said real estate be partitioned, and shall show that the proposed partition agreement is fair and just to the ward's estate.

**(c) Hearing on Application.** When such application is filed, the county clerk shall immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, provided such application shall remain on file at least ten days before any orders are made, and the judge may continue such hearing from time to time until he is satisfied concerning the application.

**(d) Approval of Agreed Partition.** If the judge is satisfied that the proposed partition is for the best interest of the ward's estate, the court shall enter an order approving partition and directing the guardian to execute the necessary agreement, or agreements, for the purpose of carrying such order and partition into effect.

**(e) Ratification of Partition Agreements.** Whenever a guardian has heretofore executed agreements, or hereafter shall execute agreements, as to the partition of any lands in which the ward has an interest, without having first secured the approval of the court as provided herein, such guardian may file with the court in which the guardianship proceedings are pending, an application for the approval and ratification of said partition agreements. The application shall refer to said agreements in such manner that the court or judge can fully understand the nature of the partition and the lands divided. It shall also state that, in the opinion of the guardian, said agreement or agreements are fair and just to the ward's estate and are for the best interest of such estate. When such application is filed a hearing shall be had thereon as provided by Subsection (c) hereof, and, if the court is of the opinion that such partition is fairly made and that the same is for the best interest of the ward's estate, an order shall be entered ratifying and approving such partition agreement or agreements, and when so ratified and approved, such partition shall be effective and binding as if originally executed after an order of the court.

**(f) Judicial Proceeding to Secure Partition.** If the guardian of the estate of a ward is of the opinion that it is for the best interest of said ward's estate

that any real estate which said ward owns in common with other part owner or owners should be partitioned, he may apply to the court in which guardianship proceedings are pending for authority to bring suit in the District Court of the proper county against the other part owners for the partition of such real estate; and, if the court hearing such application is of the opinion that such real estate should be partitioned, it shall enter an order authorizing suit to be brought for such purpose. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS

##### § 389. Investments

If, at any time, the guardian of the estate shall have on hand money belonging to the ward beyond that which may be necessary for the education and maintenance of such ward or wards, he shall invest such money as follows:

(a) In bonds or other obligations of the United States; or

(b) In tax-supported bonds of the State of Texas; or

(c) In tax-supported bonds of any county, district, political subdivision, or incorporated city or town in the State of Texas; provided, that the bonds of counties, districts, subdivisions, cities, and towns may be purchased only subject to the following restrictions: the net funded debt of said issuing unit shall not exceed ten per cent of the assessed value of taxable property therein, "net funded debt" meaning the total funded debt less sinking funds on hand; and further, in the case of cities or towns, less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenues of which are not pledged to support other obligations; provided, however, that these restrictions shall not apply to bonds issued for road purposes in this state under authority of Section 52 of Article III of the Constitution of Texas, which bonds are supported by a tax unlimited as to rate or amount; or

(d) In shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; or

(e) In the shares or share accounts of any federal savings and loan association domiciled in this state, where the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; or

(f) In collateral bonds of companies incorporated under the laws of the State of Texas, having a paid-in capital of One Million Dollars or more, when such bonds are a direct obligation of the company issuing them, and are specifically secured by first mortgage real estate notes or other securities pledged with a trustee.

(g) In interest-bearing time deposits which may be withdrawn on or before one year after demand in any bank doing business in Texas where the payment of such time deposits is insured by the Federal Deposit Insurance Corporation.

[Acts 1961, 57th Leg., p. 42, ch. 28, § 1, eff. March 25, 1961.]

##### § 389A. Other Investments

(a) **Application to Invest or Sell.** When a corporate guardian of an estate shall deem it to be in the best interest of its ward to invest in or sell any property or security in which a trustee is authorized to invest by either Article 7425b-46 V.A.T.S. (the Texas Trust Act) or Article 7425b-48 V.A.T.S. (the Uniform Common Trust Fund Act), and such investment or sale is not expressly permitted by other Sections of this Code, the guardian may file a written application in the court where the guardianship is pending, asking for an order authorizing it to make such desired investment or sale and stating the reason why the guardian is of the opinion that such investment or sale would be beneficial to the ward. No citation or notice is necessary unless ordered by the court.

(b) **Action of the Court.** Upon the hearing of the application if the court is satisfied that such investment or sale will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment or sale to be made, and shall contain such other directions as the court finds advisable.

(c) **Applicability.** The procedure specified in this Section need not be followed in making investments or sales specifically authorized by other statutes and is inapplicable when a different procedure is prescribed for an investment or sale by a guardian. [Acts 1969, 61st Leg., p. 2052, ch. 707, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 422, ch. 187, § 1, eff. May 25, 1973.]

##### § 390. Investment in Life Insurance or Annuities

(a) **Life Insurance Company Defined.** By the term "life insurance company" as used herein, is meant any stock or mutual legal reserve life insurance company that maintains the full legal reserves required under the laws of this state, and that is licensed by the State Board of Insurance to transact the business of life insurance in this state.

(b) **New Insurance and Annuities.** The guardian of the estate may invest in policies of life, term, or endowment insurance, or in annuity contracts, or both, issued by a life insurance company as herein defined, or administered by the Veterans Administration, subject, however, to the following conditions and limitations:

(1) The guardian shall first apply to the court for an order authorizing the guardian to make such investment. The application shall include a report showing in detail the financial condition of the estate at the time such application is made; the name and address of the life insur-

ance company from which the policy or annuity contract is to be purchased and that such company is then licensed by the State Board of Insurance to transact such business in this state, or that the policy or contract is administered by the Veterans Administration; a statement of the face amount and plan of the policy of insurance sought to be purchased and of the amount, frequency and duration of the annuity payments to be provided by the annuity contract sought to be purchased; a statement of the amount, frequency and duration of the premiums required by the policy or annuity contract; and a statement of the cash value of the policy or annuity contract at its anniversary nearest the twenty-first birthday of the ward, assuming that all premiums to such anniversary are paid and that there is no indebtedness against the policy or contract incurred in accordance with its terms.

(2) The policy or policies of insurance shall be on the life of the ward, his father, mother, spouse, child, brother, sister, grandfather, grandmother, or a person in whose life the ward may have an insurable interest.

(3) The ward, his or her estate, father, mother, spouse, child, brother, sister, grandfather or grandmother, and none other, shall be the beneficiary or beneficiaries of any such policy of insurance and of the death benefit of any such annuity contract, and the ward, and none other, shall be the annuitant in any such annuity contract.

(4) The control of any such policy or annuity contracts, and of the incidents of ownership therein, shall be vested in the guardian during the life and disability of the ward.

(5) The policy or annuity contract shall not be amended or changed during the life and disability of the ward except upon application to and order of the court.

(c) **Old or Existing Insurance or Annuities.** If a policy of life, term or endowment insurance or a contract of annuity is owned by the ward when a proceeding for the appointment of a guardian is begun, and it is made to appear that the company issuing such policy or contract of annuity is a life insurance company as herein defined, or the policy or contract is administered by the Veterans Administration, it shall be lawful to continue such policy or contract in full force and effect. All future premiums may be paid out of surplus funds of said ward. Provided, however, that the guardian shall apply to the court for an order to continue said policy or contract, or both, according to their existing terms or to modify the same to fit any new developments affecting the welfare of the ward, and provided further, that before any such application is granted the guardian shall file a report in said court showing in detail the financial condition of the estate of the ward at the time the application is filed.

(d) **Order on Application.** The court, if satisfied by the application and the evidence adduced at the hearing that it is to the interest of the ward to grant such application, shall enter its order granting same.

(e) **Exclusive Property of Ward on Termination of Guardianship.** Each and every right, benefit, and interest accruing under any contract for insurance or annuity coming under the provisions hereof shall become the exclusive property of said ward or wards when disability has been terminated.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1959, 56th Leg., p. 642, ch. 296, § 1; Acts 1965, 59th Leg., p. 527, ch. 271, § 1.]

### § 391. Loans and Security Therefor

If, at any time, the guardian of the estate shall have on hand money belonging to the ward or wards beyond that which may be necessary for the education and maintenance of such ward or wards, he may lend the same for the highest rate of interest that can be obtained therefor. The guardian shall take the note of the borrower for money lent, secured by mortgage with power of sale on unencumbered real estate situated in this state, worth at least twice the amount of such note; or by collateral notes secured by vendor's lien notes, as collateral; or he may purchase vendor's lien notes, provided that at least one-half has been paid in cash or its equivalent on the land for which said notes were given.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 392. Guardian's Liability for Loans

The guardian shall not be personally responsible for money lent under the direction of the court, on security approved by the court, when the borrower is unable to pay the same, or because of failure of the security, unless such guardian has been guilty of fraud or negligence with respect to such loan or the collection of the same, in which case, he and the sureties upon his bond shall be liable for whatever loss his ward sustains by reason of such fraud or negligence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

### § 393. Guardian's Investments in Real Estate

(a) **Application to Invest in Real Estate.** When the guardian thinks it best for his ward who has a surplus of money on hand to invest in real estate, he shall file a written application in the court where the guardianship is pending, asking for an order of such court authorizing him to make such desired investment, and stating the reasons why the guardian is of the opinion that such investment would be for the benefit of the ward.

(b) **Action of the Court.** When such application is filed, the attention of the judge of the court shall be called thereto, and he shall make such investigation as necessary to obtain all the facts concerning the investment; but he shall not render an opinion or make any order on the application until after the expiration of ten days from date of filing. Upon the hearing of such application, if the court is satisfied

that such investment will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment to be made, and shall contain such other directions as the court thinks advisable.

**(c) Approval of Contract for Purchase of Real Estate.** When any contract has been made for the investment of money in real estate under order of the court, such contract shall be reported in writing to the court by the guardian, and the court shall inquire fully into the same, and, if satisfied that such investment will benefit the estate of the ward, and that the title of such real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until said contract has been approved by the court by an order to that effect.

**(d) Title to Real Estate.** When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed, and accounted for by the guardian as other real estate of the ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 394. Securing Opinion of Attorney With Respect to Loans and Investments

When the guardian lends or invests the money of his ward, he shall not pay over or transfer any money in consummation of such loan or investment until he shall have submitted all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to such loan or investment to a reputable attorney for examination, and shall have received a written opinion from such attorney to the effect that all papers pertaining to such loan or investment are regular, and that the title to such bonds, notes, or real estate is good. The attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested (unless one per cent of such amount is less than Twenty-five Dollars, in which event the fee shall be Twenty-five Dollars), which shall be paid by the guardian out of the funds of the ward. On loans, the attorney's fee shall be paid by the borrower. Provided, however, that in connection with any loan on real estate the guardian may, in his discretion, obtain a mortgagee's title insurance policy in lieu of an abstract and attorney's opinion.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 395. Report of Investment and Loans

The guardian shall report to the court in writing, verified by his affidavit, the investment or lending of money belonging to the estate, within thirty days after such transaction, stating fully the facts thereof, unless the investment or loan was made pursuant to order of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 396. Liability of Guardian for Failure to Lend or Invest Funds

If the guardian neglects to invest or lend surplus money on hand at interest when he can do so by the use of reasonable diligence, he shall be liable for the principal, and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or lend the same, which amounts may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 397. Requiring Guardian to Invest or Lend Surplus Funds

When there is any surplus money of the estate in the hands of the guardian, the court, on its own motion or upon written complaint filed by any person, may cause such guardian to be cited to appear and show cause why such surplus money should not be invested or lent at interest. Upon the hearing of such complaint, the court shall enter such order as the law and the facts require.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 398. Contributions

**(a) Application.** The guardian may at any time file his sworn application in writing with the county clerk, requesting the court in which the guardianship is pending to enter an order authorizing the guardian to contribute from the income of the ward's estate a specific amount of money, stated in said application, to one or more designated corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to some one or more designated non-profit federal, state, county, or municipal projects operated exclusively for public health or welfare.

**(b) Setting Hearing on Application.** When such an application is filed, the county clerk shall immediately call the same to the attention of the judge of the court, and the judge shall, by written order filed with said clerk, designate a day to hear such application; provided that such application shall remain on file at least ten days before such hearing is held. The judge may postpone or continue such hearing from time to time until he is satisfied concerning such application.

**(c) Action of the Court.** Upon the conclusion of such hearing, if the court is satisfied and finds from the evidence that the amount of the proposed contribution stated in the application will probably not exceed twenty per cent of the net income of the ward's estate for the current calendar year, and that the net income of the ward's estate for such year exceeds, or probably will exceed, Twenty-five Thousand Dollars, and that the full amount of such contribution, if made, will probably be deductible from the ward's gross income, in determining the net income of the ward under the applicable income tax laws, rules, and regulations of the United States of America, and that the condition of the ward's

estate is such as to justify a contribution in said amount, and that the proposed contribution is reasonable in amount and is for a worthy cause, the court in its discretion may enter an order authorizing the guardian to make such contribution from income of the ward's estate to the particular donee designated in said application and order. When such order has been entered and filed with the county clerk, the guardian shall be entitled to make such contribution, but he shall not be entitled to any commission or compensation by reason thereof or in connection therewith.

**(d) Consent of Certain Wards to Contributions.** If at the time of the hearing, the ward be fourteen years or more of age and be of sound mind and not an habitual drunkard, no order authorizing such a contribution shall be entered unless there shall have been first filed with the county clerk in said proceedings, the ward's sworn written request that the guardian's said application be granted, and that such particular contribution in the designated amount be authorized by the court, and unless such request be affirmed by personal appearance of the ward before the judge of said court at said hearing.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**PART 10A. STOCKS, BONDS AND OTHER PERSONAL PROPERTY**

*Part 10A, consisting of section 398A, was added by Acts 1969, 61st Leg., p. 2106, ch. 719, § 1.*

**§ 398A. Holding of Stocks, Bonds and Other Personal Property by Personal Representatives in Name of Nominee**

Unless otherwise provided by will, a personal representative may cause stocks, bonds, and other personal property of an estate to be registered and held in the name of a nominee without mention of the fiduciary relationship in any instrument or record constituting or evidencing title thereto. The personal representative is liable for the acts of the nominee with respect to any property so registered. The records of the personal representative shall at all times show the ownership of the property. Any property so registered shall be in the possession and control of the personal representative at all times and be kept separate from his individual property. [Acts 1969, 61st Leg., p. 2106, ch. 719, § 1, eff. Sept. 1, 1969.]

**PART 11. ANNUAL ACCOUNTS AND OTHER EXHIBITS**

**§ 399. Annual Accounts Required**

**(a) Estates of Decedents and Wards Being Administered Under Order of Court.** The personal representative of the estate of a decedent or ward being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were

presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate or ward, as the case may be.

(2) Any changes in the property of the estate or ward which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safe-keeping.

**(b) Annual Reports Continue Until Estate Closed.** Each personal representative of the estate of a decedent or ward shall continue to file annual accounts conforming to the essential requirements of those in Subsection (a) hereof as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money, securities, and other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference thereto.

**(c) Guardians of the Person.** The guardian of the person, when there is a separate guardian of the estate, shall at the expiration of twelve (12) months from the date of his qualification and receipt of letters, and annually thereafter, return to the court his sworn account showing each item of receipts and disbursements for the support and maintenance of the ward, his education when necessary, and support and maintenance of the ward's dependents, when

authorized by order of court. All who are guardians of the person shall include in their reports facts concerning each ward's physical welfare, his well-being, and his progress in education, if the latter be pertinent. Unless the judge is satisfied that the facts stated are true, he shall issue such orders as are necessary for the best interest of the ward.

**(d) Supporting Vouchers, etc., Attached to Accounts.** Annexed to all annual accounts of representatives of estates and wards, and, so far as applicable, accounts of guardians of the persons of wards and guardians of those wards entitled to receive governmental funds, required by this Section, shall be:

(1) Proper vouchers for each item of credit claimed in the account, or, in the absence of such voucher, the item must be supported by evidence satisfactory to the court. Original vouchers may, upon application, be returned to the representative after approval of his account.

(2) An official letter from the bank or other depository in which the money on hand of the estate or ward is deposited, showing the amounts in general or special deposits.

(3) Proof of the existence and possession of securities owned by the estate, or shown by the accounting, as well as other assets held by a depository subject to orders of the court, the proof to be by one of the following means:

a. By an official letter from the bank or other depository wherein said securities or other assets are held for safekeeping; provided, that if such depository is the representative, the official letter shall be signed by a representative of such depository other than the one verifying the account; or

b. By a certificate of an authorized representative of the corporation which is surety on the representative's bonds; or

c. By a certificate of the clerk or a deputy clerk of a court of record in this State; or

d. By an affidavit of any other reputable person designated by the court upon request of the representative or other interested party.

Such certificate or affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the representative as assets of the estate in which the accounting is made, and shall describe the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and shall state the time when and the place where exhibited. In lieu of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in his order with respect thereto, a statement that the securities shown therein as on hand were in fact

exhibited to him, and that those so exhibited were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The court may require additional evidence as to the existence and custody of such securities and other personal property as in his discretion he shall deem proper; and may require the representative to exhibit them to the court, or any person designated by him, at any time at the place where held for safekeeping.

**(e) Verification of Account.** The representative filing the account shall attach thereto his affidavit that it contains a correct and complete statement of the matters to which it relates.

**(f) Annual Accounts May be Waived, When.** In cases in which the income of a ward's estate from real property becomes negligible, and the estate owns no personal property, the estate may be closed, as hereinafter provided. If the estate owns personal property which produces negligible or fixed income, the court shall have the power to waive the filing of annual accounts, and the court may permit the guardian to receive all income and apply it to the support, maintenance, and education of the ward, and account to the court for income and corpus of the estate when the same must be closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 11(a).]

#### § 400. Penalty for Failure to File Annual Account

Should any personal representative of an estate, or guardian of the person of a ward, fail to return any annual account required by preceding sections of this Code, any person interested in said estate or ward may, upon written complaint, or the court upon its own motion may, cause the personal representative to be cited to return such account, and show cause for such failure. If he fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars (\$500). He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 11(b).]

#### § 401. Action Upon Annual Accounts

These rules shall govern the handling of annual accounts:

(a) They shall be filed with the county clerk, and the filing thereof shall be noted forthwith upon the judge's docket.

(b) Before being considered by the judge, the account shall remain on file ten (10) days.

(c) At any time after the expiration of ten (10) days after the filing of an annual account, the judge shall consider same, and may continue the hearing thereon until fully advised as to all items of said account.

(d) No accounting shall be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under order of court has been proved as required by law.

(e) If the account be found incorrect, it shall be corrected. When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows:

(1) Order for Payment of Claims in Full. If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the representative has in his hands sufficient funds for the payment of every character of claims against the estate, the court shall order immediate payment to be made of all claims allowed and approved or established by judgment.

(2) Order for Pro Rata Payment of Claims. If it shall appear from the account, or from other evidence, that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the personal representative has any funds on hand, the court shall order such funds to be applied to the payment of all claims having a preference in the order of their priority if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established by final judgment, taking into consideration also the claims that were presented within twelve (12) months after the granting of administration, and those which are in suit or on which suit may yet be instituted.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1957, 55th Leg., p. 53, ch. 31, § 11(c).]

**§ 402. Additional Exhibits of Estates of Decedents**

At any time after the expiration of fifteen months from the original grant of letters to an executor or administrator, any interested person may, by a complaint in writing filed in the court in which the estate is pending, cause the representative to be cited to appear and make an exhibit in writing under oath, setting forth fully, in connection with previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence, that said representative has any funds of the estate in his hands subject to distribution among the creditors of the estate, the court shall order the same to be paid out to them according to the provisions of this Code; or any representative may voluntarily present such exhibit to the court; and, if he has any of the funds of

the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 403. Penalty for Failure to File Exhibits or Reports**

Should any personal representative fail to file any exhibit or report required by this Code, any person interested in the estate may, upon written complaint filed with the clerk of the court, cause him to be cited to appear and show cause why he should not file such exhibit or report; and, upon hearing, the court may order him to file such exhibit or report, and, unless good cause be shown for such failure, the court may revoke the letters of such personal representative and may fine him in an amount not to exceed One Thousand Dollars.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE**

**§ 404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates**

Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(a) **Estates of Decedents.** When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

(b) **Persons and Estates of Wards.**

1. **Of a Minor.** When the minor dies, or becomes an adult by becoming twenty-one years of age, or by removal of disabilities of minority according to the law of this state, or by marriage.

2. **Of Incompetents.** When the ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community.

3. **Of a Person Entitled to Funds From Any Governmental Source.** When the ward dies, or when the court finds that the necessity for the guardianship has ended.

4. **Exhaustion of Estate.** When the estate of a ward becomes exhausted.

5. **When Income Negligible.** When the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome. In such case the court may authorize such income to be paid to a parent, or some

other person who has acted as guardian, to assist as far as possible in the maintenance of the ward, and without liability to account to the court for such income.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 404A. Payment of Funeral Expenses and Other Debts

Notwithstanding the provisions of the preceding Section, before the guardianship of the persons and the estates of wards shall be closed upon the death of any ward, the guardian subject to the approval of the Court may make all funeral arrangements, pay for such funeral expenses out of the estate of the deceased ward and pay all other debts out of such estate.

[Acts 1963, 58th Leg., p. 1009, ch. 416, § 1.]

#### § 405. Account for Final Settlement of Estates of Decedents and Persons and Estates of Wards

When administration of the estate of a decedent, or guardianship of person or estate, or of the person and estate of a ward, is to be settled and closed, the personal representative of such estate or of such ward shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration or guardianship, as the case may be, concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate or of the ward, as the case may be, including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

##### (a) As to Estates of Decedents.

1. The property belonging to the estate which has come into the hands of the executor or administrator.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.
7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

##### (b) As to Estates of Wards.

1. The property, rents, revenues, and profits received by the guardian, and belonging to his ward, during his guardianship.
2. The disposition made of such property, rents, revenues, and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. The property of the estate remaining in the hands of such guardian, if any.
5. Such other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime

If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's or ward's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation. So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward or his guardian, at obligor's option, and such payment or tender shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### § 407. Citation Upon Presentation of Account for Final Settlement

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents or wards, or of the persons of wards, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, such notice as shall be directed by the court by written order.
2. If a ward be a living resident of this state, and his residence be known, he shall be cited by personal service.
3. If one who has been a ward be deceased, but there be a representative of his estate other than the one filing the account, such representative shall be cited by personal service.

4. If a ward be deceased, or if his residence be unknown, or if he is a non-resident of this state, and no representative of his estate has been appointed and qualified in this state, the citation to him or to his estate shall be by publication.

5. If the court deems further additional notice necessary, including publication, it shall require the same by written order.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Acts 1959, 56th Leg., p. 641, ch. 294, § 1.]

**§ 408. Action of the Court**

(a) **Action Upon Account.** Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, shall audit and settle the same, and restate it if that be necessary.

(b) **Distribution of Remaining Property.** Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that it be delivered, in case of a ward, to such ward or other person legally entitled thereto; in case of a decedent, that a partition and distribution be made among the persons entitled to receive such estate.

(c) **Discharge of Representative When No Property Remains.** If, upon such settlement, there be none of the estate remaining in the hands of the representative, he shall be discharged from his trust and the estate ordered closed.

(d) **Discharge When Estate Fully Administered.** Whenever the representative of an estate has fully administered the same in accordance with this Code and the orders of the court, and his final account has been approved, and he has delivered all of said estate remaining in his hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from his trust, and declaring the estate closed.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 409. Money Becoming Due Pending Final Discharge**

Until the order of final discharge of the personal representative is entered in the minutes of the court, money or other thing of value falling due to the estate or ward while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 410. Inheritance Taxes Must Be Paid**

No final account of an executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the

court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid. If no inheritance tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, and filed with the final papers closing the estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 411. Appointment of Attorney to Represent Ward**

When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 412. Offsets, Credits, and Bad Debts**

In the settlement of any of the accounts of the personal representative of an estate, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 413. Accounting for Labor or Services of a Ward**

The guardian of a ward shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by the ward, but the guardian shall be entitled to reasonable credits for the board, clothing, and maintenance of his ward.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 414. Procedure if Representative Fails to Deliver Estate**

If any personal representative of an estate or ward, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, appraising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate or money or funds is and/or

has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

#### CHAPTER IX. SPECIFIC PROVISIONS RELATING TO PERSONS OF UNSOUND MIND AND HABITUAL DRUNKARDS

Sec.

- 415. Information That Person of Unsound Mind or Habitual Drunkard is Without Guardian.
- 416. Issuance of Warrant Upon Information.
- 417. Hearing Upon Information.
- 418. Appointment of Guardian.
- 419. New Trial.
- 420. Applicability of Other Provisions of This Code.
- 421. Support of Ward's Family.
- 422. Confinement of Ward.
- 423. Liability for Maintenance.
- 424. Expenses of Confinement.
- 425. Recovery by County of Sums Paid by It.
- 426. Restoration of Ward to Sound Mind or Sobriety.

##### § 415. Information That Person of Unsound Mind or Habitual Drunkard is Without Guardian

Any county officer, or other person, who shall discover any resident in the county who is of unsound mind or an habitual drunkard, and who is without a guardian, shall file information thereof with the county judge. Such information shall state that, to the best of the knowledge and belief of the affiant, such person is of unsound mind, or is an habitual drunkard, and is without a guardian; and, if the name of such person is unknown, such person shall be described. The information shall be subscribed and sworn to by the informant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 416. Issuance of Warrant Upon Information

Upon information that any person residing in the county is of unsound mind, or is an habitual drunkard, and is without a guardian, the judge, if satisfied that there is good cause for the exercise of his jurisdiction, shall issue a warrant to the sheriff or constable commanding that such persons be brought before him at a time and place named in such warrant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 417. Hearing Upon Information

When the person charged is brought before the judge, the judge shall appoint a qualified person to act as guardian ad litem for the accused at such hearing and shall cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind or is an habitual drunkard. The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial thereof shall be governed by the same rules that govern in ordinary suits in the county court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 418. Appointment of Guardian

If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard, as charged, the court shall after the issuance and posting of notice as in the case of the appointment of permanent guardians, enter judgment accordingly, and appoint a guardian of the person and estate, or of either, of such defendant.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 419. New Trial

The court may, for good cause shown, at any time within ten days after the verdict has been returned and judgment has been rendered, set aside the same and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 420. Applicability of Other Provisions of This Code

Each provision of this Code relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of incompetents in so far as the same are applicable.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 421. Support of Ward's Family

The court by which any incompetent is committed to guardianship may make orders for the support of his family and the education of his children, when necessary.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 422. Confinement of Ward

If any person of unsound mind shall be so far disordered in his mind as to endanger his own person, or the person or property of others, the guardian or other person under whose care he is, and who is bound to provide for his support, shall confine him in a suitable place until such time, not exceeding thirty days, as the court shall make an order for the restraint, support, and safekeeping of such ward. If any such person of unsound mind shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate shall cause such person to be apprehended and may employ any person to confine him in a suitable place until the court shall make further order thereon.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

##### § 423. Liability for Maintenance

Where an incompetent has no estate of his own, he shall be maintained:

- (a) By the husband or wife of such person, if able to do so; or, if not,
- (b) By the father or mother of such person, if able to do so; or, if not,
- (c) By the children and grandchildren of such person, respectively, if able to do so; or, if not,

(d) By the county in which said person has his residence.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 424. Expenses of Confinement**

The expenses attending the confinement of an incompetent shall be paid by the guardian out of the estate of the ward, if he has an estate; and, if he has none, such expenses shall be paid by the person bound to provide for and support such incompetent; and, if not so paid, the county shall pay the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 425. Recovery by County of Sums Paid by It**

In all cases of appropriation out of the county treasury for the support and confinement of any incompetent, the amount thereof may be recovered by the county from the estate of such person, or from any person who by law is bound to provide for the support of such incompetent, if there be any person able to pay for the same.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 426. Restoration of Ward to Sound Mind or Sobriety**

(a) **Citation of Guardian.** If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind or an habitual drunkard has been restored to his right mind or to sober habits, the guardian of the person and of the estate of such ward shall be cited to appear before the court on a day and at a place named in such citation, and show cause why such ward should not be adjudged to be of sound mind, or no longer an habitual drunkard, and discharged from further guardianship.

(b) **Trial.** If the facts of such alleged restoration be doubtful, the court shall cause a qualified jury to be impaneled to try the issue as in the first instance, and if such jury finds that the ward has been restored to his right mind or to sober habits, he shall be adjudged a person of sound mind or no longer an habitual drunkard, and shall be discharged from guardianship by an order to that effect; and the guardian shall immediately settle his accounts and deliver all the property remaining in his hands to such ward. If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order adjudging the person to be of sound mind or no longer an habitual drunkard and discharging the ward from guardianship.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**CHAPTER X. PAYMENT OF ESTATES INTO STATE TREASURY**

Sec.

427. When Estates to Be Paid into State Treasury.

428. Notice to State Treasurer and Evidence Thereof.

429. Penalty for Neglect to Notify State Treasurer.

430. Receipt of State Treasurer.

431. Penalty for Failure to Make Payments to State Treasurer.

Sec.

432. State Treasurer May Enforce Payment and Collect Damages.

433. Suit for the Recovery of Funds Paid to the State Treasurer.

**§ 427. When Estates to Be Paid into State Treasury**

If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the State Treasurer; and such portion as is in other property he shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the State Treasurer, in all such cases allowing the executor or administrator reasonable compensation for his services.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 428. Notice to State Treasurer and Evidence Thereof**

Whenever an order shall be made by the court for an executor or administrator to pay any funds to the State Treasurer under the preceding provisions of this Code, the clerk of the court in which such order is made shall mail to the State Treasurer a certified copy of such order within thirty days after the same has been made. Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, addressed to the State Treasurer at Austin, Texas, and the date when it was mailed, and shall record such certificate.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 429. Penalty for Neglect to Notify State Treasurer**

Any clerk who shall neglect to transmit a certified copy of any such order within the time prescribed, and to take and record such certificate, as required in the preceding Section, shall be liable in a penalty of One Hundred Dollars, to be recovered in an action in the name of the state, after personal service of citation, on the information of any citizen, one-half of which penalty shall be paid to the informer and the other one-half to the state.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 430. Receipt of State Treasurer**

Whenever an executor or administrator pays the State Treasurer any funds of the estate he represents, under the preceding provisions of this Code, he shall take from the State Treasurer a receipt for such payment, with official seal attached, and shall file the same with the clerk of the court ordering

such payment; and such receipt shall be recorded in the minutes of the court.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 431. Penalty for Failure to Make Payments to State Treasurer**

When an executor or administrator fails to pay to the State Treasurer any funds of an estate which he has been ordered by the court so to pay, within three months after such order has been made, such executor or administrator shall, after personal service of citation charging such failure and after proof thereof, be liable to pay out of his own estate to the State Treasurer damages thereon at the rate of five per cent per month for each month, or fraction thereof, that he fails to make such payment after three months from such order, which damages may be recovered in any court of competent jurisdiction. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 432. State Treasurer May Enforce Payment and Collect Damages**

The State Treasurer shall have the right in the name of the state to apply to the court in which the order for payment was made to enforce the payment of funds which the executor or administrator has failed to pay to him pursuant to order of court, together with the payment of any damages that shall have accrued under the provisions of the preceding Section of this Code, and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. The State Treasurer shall also have the right to institute suit in the name of the state against such executor or administrator, and the sureties on his bond, for the recovery of the funds so ordered to be paid and such damages as have accrued. The county or district attorney, as the case may be, shall represent the State Treasurer in all such proceedings, and shall also represent the interests of the state in all other matters arising under any provisions of this Code. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**§ 433. Suit for the Recovery of Funds Paid to the State Treasurer**

(a) **Mode of Recovery.** When funds of an estate have been paid to the State Treasurer, any heir, devisee, or legatee of the estate, or their assigns, or any of them, may recover the portion of such funds to which he, she, or they are entitled. The person claiming such funds shall institute suit therefor, by petition filed in the court in which the estate was administered, against the State Treasurer, setting forth the plaintiff's right to such funds, and the amount claimed by him.

(b) **Citation.** Upon the filing of such petition, the clerk shall issue a citation for the county attorney of the county or the district attorney of the district, to be served by personal service, to appear and represent the interest of the state in such suit, and it shall be the duty of such county or district attorney to do so.

(c) **Procedure.** The proceedings in such suit shall be governed by the rules for other civil suits; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the State Treasurer to pay the same.

(d) **Costs.** The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs.

[Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

**REPEAL OF LAWS—EMERGENCY CLAUSE**

Sec.

434. Repeal of Laws Supplanted by This Code.

435. Emergency Clause.

**§ 434. Repeal of Laws Supplanted by This Code**

The following statutes and laws of this State are supplanted by the provisions of this Code and are hereby repealed:

(a) Title 48 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>1</sup> Article 932 of the Revised Civil Statutes of Texas of 1925;<sup>2</sup> and Chapter 196, Acts of the 52nd Legislature (1951), page 322;<sup>3</sup> and

<sup>1</sup> Civil Statutes, Arts. 2570 to 2583.

<sup>2</sup> Civil Statutes, Art. 932.

<sup>3</sup> Civil Statutes, Art. 2583a.

(b) Title 129 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>4</sup> and

<sup>4</sup> Civil Statutes, Arts. 8281 to 8305.

(1) Sections 1 and 2 of Chapter 196, Acts of the 42nd Legislature (1931), page 329;<sup>5</sup> and

<sup>5</sup> Civil Statutes, Arts. 8291, 8292.

(2) Section 1 of Chapter 297, Acts of the 49th Legislature (1945), page 469;<sup>6</sup> and

<sup>6</sup> Civil Statutes, Art. 8281.

(3) Sections 1 and 2 of Chapter 170, Acts of the 50th Legislature (1947), page 275;<sup>7</sup> and

<sup>7</sup> Civil Statutes, Arts. 8283, 8284.

(4) Section 1 of Chapter 120, Acts of the 51st Legislature (1949), page 218;<sup>8</sup> and

<sup>8</sup> Civil Statutes, Art. 8293.

(c) Title 54 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>9</sup> and

<sup>9</sup> Civil Statutes, Arts. 3290 to 3703.

(1) Acts of the 39th Legislature (1925), Section 1 of Chapter 82, page 253;<sup>10</sup> and

<sup>10</sup> Civil Statutes, Art. 3678.

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 50, page 74;<sup>11</sup> Sections 1, 2 and 3 of Chapter 81, page 123;<sup>12</sup> Section 1 of Chapter 92, page 142;<sup>13</sup> Section 1 of Chapter 152, page 223;<sup>14</sup> and Section 1 of Chapter 244, page 362;<sup>15</sup> and

- <sup>11</sup> Civil Statutes, Art. 3654.
- <sup>12</sup> Civil Statutes, Arts. 3334, 3334a, 3336.
- <sup>13</sup> Civil Statutes, Art. 3351.
- <sup>14</sup> Civil Statutes, Art. 3386.
- <sup>15</sup> Civil Statutes, Art. 3597a.

(3) Acts of the 41st Legislature (1929): Sections 1 and 2 of Chapter 29, page 63; <sup>16</sup> Section 1 of Chapter 63, page 130; <sup>17</sup> Section 2 of Chapter 100, page 235; <sup>18</sup> Section 1 of Chapter 132, page 288; <sup>19</sup> and Section 1 of Chapter 48, First Called Session, page 107; <sup>20</sup> and

- <sup>16</sup> Civil Statutes, Arts. 3386, 3576.
- <sup>17</sup> Civil Statutes, Art. 3393a.
- <sup>18</sup> Civil Statutes, Art. 3334.
- <sup>19</sup> Civil Statutes, Art. 3325.
- <sup>20</sup> Civil Statutes, Art. 3310a.

(4) Acts of the 42nd Legislature (1931): Chapter 52, page 79; <sup>21</sup> Section 1 of Chapter 59, page 93; <sup>22</sup> Chapter 123, page 210; <sup>23</sup> Section 1 of Chapter 234, page 389; <sup>24</sup> Section 1 of Chapter 235, page 390; <sup>25</sup> Section 1 of Chapter 236, page 391; <sup>26</sup> and Section 1 of Chapter 35a, page 842; <sup>27</sup> and

- <sup>21</sup> Civil Statutes, Art. 3515a.
- <sup>22</sup> Civil Statutes, Art. 3293-A.
- <sup>23</sup> Civil Statutes, Art. 3310a.
- <sup>24</sup> Civil Statutes, Art. 3531.
- <sup>25</sup> Civil Statutes, Art. 3690.
- <sup>26</sup> Civil Statutes, Art. 3492.
- <sup>27</sup> Probably should read: "and Section 1 of Chapter 352, page 842". Civil Statutes, Art. 3432a.

(5) Acts of the 43rd Legislature, Third Called Session (1934): Section 1 of Chapter 25, page 48; <sup>28</sup> and

- <sup>28</sup> Civil Statutes, Art. 3369.

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 247, page 634; <sup>29</sup> Section 1 of Chapter 248, page 635; <sup>30</sup> Section 1 of Chapter 250, page 637; <sup>31</sup> Section 1 of Chapter 251, page 638; <sup>32</sup> Section 1 of Chapter 252, page 638; <sup>33</sup> Section 1 of Chapter 253, page 639; <sup>34</sup> Section 1 of Chapter 266, page 654; <sup>35</sup> Section 1 of Chapter 272, page 658; <sup>36</sup> Section 1 of Chapter 273, page 659; <sup>37</sup> Sections 1 and 2 of Chapter 277, page 662; <sup>38</sup> Section 1 of Chapter 278, page 664; <sup>39</sup> Section 1 of Chapter 280, page 665; <sup>40</sup> and Chapter 446, Second Called Session, page 1729; <sup>41</sup> and

- <sup>29</sup> Civil Statutes, Art. 3311.
- <sup>30</sup> Civil Statutes, Art. 3334.
- <sup>31</sup> Civil Statutes, Art. 3576.
- <sup>32</sup> Civil Statutes, Art. 3321.
- <sup>33</sup> Civil Statutes, Art. 3420.
- <sup>34</sup> Civil Statutes, Art. 3476.
- <sup>35</sup> Civil Statutes, Art. 3396.
- <sup>36</sup> Civil Statutes, Art. 3337.
- <sup>37</sup> Civil Statutes, Art. 3336.
- <sup>38</sup> Civil Statutes, Arts. 3430, 3576 note.
- <sup>39</sup> Civil Statutes, Art. 3417.
- <sup>40</sup> Civil Statutes, Art. 3317.
- <sup>41</sup> Civil Statutes, Arts. 3456A to 3456I.

(7) Acts of the 45th Legislature (1937): Section 1 of Chapter 193, page 391; <sup>42</sup> and Section 1 of Chapter 250, page 499; <sup>43</sup> and

- <sup>42</sup> Civil Statutes, Arts. 3410-a, 3410-b.
- <sup>43</sup> Civil Statutes, Art. 3605.

(8) Acts of the 46th Legislature (1939): H.B. No.656, page 318; <sup>44</sup> H.B.No.158, page 319; <sup>45</sup> H.B.No.31, page 320; <sup>46</sup> and S.B.No.141, page 321; <sup>47</sup> and

- <sup>44</sup> Civil Statutes, Art. 3334b.
- <sup>45</sup> Civil Statutes, Art. 3336.
- <sup>46</sup> Civil Statutes, Art. 3370.
- <sup>47</sup> Civil Statutes, Arts. 3393a, 3396.

(9) Acts of the 47th Legislature (1941): Section 1 of Chapter 382, page 633; <sup>48</sup> and Chapter 521, page 845; <sup>49</sup> and

- <sup>48</sup> Civil Statutes, Art. 3432b.
- <sup>49</sup> Civil Statutes, Arts. 3333a, 3333a note.

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 234, page 356; <sup>50</sup> and

- <sup>50</sup> Civil Statutes, Art. 3554a.

(11) Acts of the 49th Legislature (1945): Section 1 of Chapter 214, page 296; <sup>51</sup> Section 1 of Chapter 296, page 468; <sup>52</sup> Section 2 of Chapter 297, page 469; <sup>53</sup> and Sections 1 and 2 of Chapter 316, page 525; <sup>54</sup> and

- <sup>51</sup> Civil Statutes, Art. 3310b.
- <sup>52</sup> Civil Statutes, Art. 3344.
- <sup>53</sup> Civil Statutes, Art. 3348.
- <sup>54</sup> Civil Statutes, Arts. 3386, 3576.

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 401, page 942; <sup>55</sup> and

- <sup>55</sup> Civil Statutes, Art. 3683a.

(13) Acts of the 52nd Legislature (1951): Chapter 37, page 62; <sup>56</sup> and

- <sup>56</sup> Civil Statutes, Art. 3582a.

(d) Title 69 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; <sup>57</sup> and

- <sup>57</sup> Civil Statutes, Arts. 4102 to 4329.

(1) Acts of the 39th Legislature (1925): Section 1 of Chapter 156, page 367; <sup>58</sup> and Section 1 of Chapter 134, page 338; <sup>59</sup> and

- <sup>58</sup> Civil Statutes, Art. 4225.
- <sup>59</sup> Civil Statutes, Arts. 4195, 4196.

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 16, page 22; <sup>60</sup> Section 2 of Chapter 31, page 43; <sup>61</sup> Section 1 of Chapter 164, page 237; <sup>62</sup> and Sections 1, 2 and 3 of Chapter 179, page 257; <sup>63</sup> and

- <sup>60</sup> Civil Statutes, Art. 4231.
- <sup>61</sup> Civil Statutes, Art. 4195a.
- <sup>62</sup> Civil Statutes, Art. 4192.
- <sup>63</sup> Civil Statutes, Arts. 4102, 4111, 4123.

(3) Acts of the 41st Legislature (1929): Section 1 of Chapter 31, page 65; <sup>64</sup> Chapter 126, page 281; <sup>65</sup> Sections 1 and 2 of Chapter 127, page 282; <sup>66</sup> Sections 1 and 2 of Chapter 128, page 283; <sup>67</sup> Sections 1 and 2 of Chapter 129, page 284; <sup>68</sup> Sections 1 and 2 of Chapter 130, page 285; <sup>69</sup> Sections 1, 2, 3, 4, 5 and 6 of Chapter 131, page 286; <sup>70</sup> Section 1 of Chapter 133, page 289; <sup>71</sup> and Chapter 305, page 684; <sup>72</sup> and

- <sup>64</sup> Civil Statutes, Art. 4111.
- <sup>65</sup> Civil Statutes, Art. 4227a.
- <sup>66</sup> Civil Statutes, Art. 4233.
- <sup>67</sup> Civil Statutes, Art. 4143.
- <sup>68</sup> Civil Statutes, Art. 4234.
- <sup>69</sup> Civil Statutes, Art. 4148.
- <sup>70</sup> Civil Statutes, Arts. 4282 to 4284.
- <sup>71</sup> Civil Statutes, Art. 4142.
- <sup>72</sup> Civil Statutes, Art. 4180.

(4) Acts of the 42nd Legislature (1931): Section 1 of Chapter 237, page 392; <sup>73</sup> and

- <sup>73</sup> Civil Statutes, Art. 4200.

(5) Acts of the 43rd Legislature (1933): Chapter 47, page 93; <sup>74</sup> Chapter 239, page 838; <sup>75</sup> and Section 1 of Chapter 26, Third Called Session (1934), page 49; <sup>76</sup> and

- <sup>74</sup> Probably should read: "Chapter 47, page 96". Civil Statutes, Art. 4295a.
- <sup>75</sup> Civil Statutes, Art. 4223a.
- <sup>76</sup> Civil Statutes, Art. 4195a.

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 13, page 5;<sup>77</sup> Section 1 of Chapter 79, page 196;<sup>78</sup> Section 1 of Chapter 84, page 206;<sup>79</sup> Section 1 of Chapter 254, page 640;<sup>80</sup> Section 1 of Chapter 279, page 664;<sup>81</sup> and

<sup>77</sup> Probably should read: "Section 1 of Chapter 13, page 35". Civil Statutes, Art. 4204.

<sup>78</sup> Civil Statutes, Art. 4216.

<sup>79</sup> Civil Statutes, Art. 4201.

<sup>80</sup> Civil Statutes, Art. 4115.

<sup>81</sup> Civil Statutes, Art. 4291.

(7) Acts of the 45th Legislature (1937): Chapter 289, page 579;<sup>82</sup> Chapter 336, page 673;<sup>83</sup> Sections 1 and 2 of Chapter 27, First Called Session, page 1803;<sup>84</sup> and Section 1 of Chapter 54, Second Called Session, page 1964;<sup>85</sup> and

<sup>82</sup> Civil Statutes, Art. 4112a.

<sup>83</sup> Civil Statutes, Art. 4180.

<sup>84</sup> Civil Statutes, Arts. 4285, 4286.

<sup>85</sup> Civil Statutes, Art. 4180.

(8) Acts of the 46th Legislature (1939): S.B. No.189, page 340;<sup>86</sup> and

<sup>86</sup> Civil Statutes, Art. 4225.

(9) Acts of the 47th Legislature (1941): Section 3 of Chapter 303, page 480;<sup>87</sup> and Sections 1, 2, 3, 4, 5, 6 and 7 of Chapter 541, page 867;<sup>88</sup> and

<sup>87</sup> Civil Statutes, Art. 4203.

<sup>88</sup> Civil Statutes, Arts. 4113, 4114, 4116, 4117, 4121 to 4123, 4128, 4228, 4229, 4272, 4123a, 4123a-1.

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 56, page 65;<sup>89</sup> Chapter 281, page 414;<sup>90</sup> and Section 1 of Chapter 378, page 684;<sup>91</sup> and

<sup>89</sup> Civil Statutes, Art. 4180.

<sup>90</sup> Civil Statutes, Art. 4296.

<sup>91</sup> Civil Statutes, Arts. 4201, 4216.

(11) Acts of the 49th Legislature (1945): Sections 3, 4 and 5 of Chapter 316, page 525;<sup>92</sup> and

<sup>92</sup> Civil Statutes, Arts. 4141, 4201, 4216.

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 39, page 51;<sup>93</sup> and Section 1 of Chapter 256, page 453;<sup>94</sup> and

<sup>93</sup> Civil Statutes, Art. 4296.

<sup>94</sup> Civil Statutes, Art. 4141.

(13) Acts of the 51st Legislature (1949): Section 1 of Chapter 499, page 923;<sup>95</sup> Section 1 of Chapter 556, page 1093;<sup>96</sup> Chapter 456, page 842;<sup>97</sup> and Section 3 of Chapter 259, page 447;<sup>98</sup> and

<sup>95</sup> Civil Statutes, Art. 4123a-1.

<sup>96</sup> Civil Statutes, Art. 4168.

<sup>97</sup> Probably should read "Chapter 458, page 842". Civil Statutes, Art. 4192b.

<sup>98</sup> Probably should read "Section 3 of Chapter 259, page 477". Civil Statutes, Art. 6008b, § 3.

(14) Acts of the 52nd Legislature (1951): Section 1 of Chapter 34, page 56.<sup>99</sup>

<sup>99</sup> Civil Statutes, Art. 4192.

(15) Acts of the 53rd Legislature (1953): Section 1 of Chapter 70, page 104.<sup>1</sup>

<sup>1</sup> Civil Statutes, Art. 4285.

#### § 435. Emergency Clause

The need for revision of the probate statutes of this state creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted. [Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.]

## DISPOSITION TABLE

Showing where provisions of former Probate Articles of the Civil Statutes are covered in the Texas Probate Code.

Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section
932	30	3315	10	3357	77	3408	250
2570	38	3316	19	3358	77	3409	250
2571	38	3316	36	3359	79	3410	251
2572	39	3317	3	3360-3364	220	3410-a	251
2573	41	3318	23	3364	83	3410-b	11
2574	41	3319	26	3365	105	3411	252
2575	41	3320	399, 404	3366	106	3412	250
2576	44	3321	399	3367	223	3413-3415	255
2577	43	3322	189	3368	—	3416	256
2578	45	3323	188	3369	88	3417-3418	257
2579	45	3324	27	3370	88	3419-3421	258
2580	46	3325	74	3371	181	3422-3423	259
2581	42	3326	73	3372	179	3424	261
2582	42	3327	92	3373-3377	131	3425	260
2583	41	3328	11	3378	132	3426	230
2583a	47	3329	81	3379	133	3427-3428	238
3290	4	3330	81	3380	134	3429	233
3291	5	3331	81	3381	135	3430	234
3292	72	3332	82	3382	190	3431	240
3293	6	3333	128	3383-3385	190	3432	240
3293-A	6	3333a	129	3386	194	3432a	234
3294	8	3334	34	3387	196	3432b	239
3295	13	3334	128	3388	192	3433	11
3296	15	3334a	129	3389	149	3434	33
3297	14	3334b	129	3389	195	3435	15
3298	16	3335	128	3390	199	3436	145
3299	17	3336	128	3391	200	3437	147
3300	18	3337	128	3392	203	3438	149
3301	15	3338	128	3393	205	3438	214
3302	23	3339	76	3393a	208	3439	149
3303	Repealed	3340	80	3394	204	3439	215
3304	21	3341	15, 80	3395	210	3440	216
3305	11	3342	80	3396	33	3441	217
3306	33	3343	80	3397	206	3442	150
3307	24	3344	84	3398	207	3443-3447	148
3308	75	3345	85	3399	209	3448	332
3309	25	3346	86	3400	218	3449, 3450	Omitted
3310	33	3347	86	3401	182	3451	316
3310a	33	3348	88	3402	183	3452	224
3310b	26	3349	85	3403	183	3453	225
3310b	33	3350	87	3403	186	3454	224
3311	33	3351	89	3404	183	3455	226
3312	32	3352	95	3405	187	3456	227
3313	22	3353	78	3406	248	3456A-3456H	154
3314	37	3354-3356	178	3407	249	3456I	Omitted

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Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section
3457	262	3524	315	3576	346	3634	404
3458	263	3525	312	3576	348	3634-3635	405
3459	264	3526	317	3576	354	3636	406
3460	267	3527	317	3577	347	3637	407
3461	266	3528	317	3578	345	3638	33
3462-3463	268	3529	318	3579	352	3639	407
3464	269	3530	314	3580	346	3640-3643	408
3465	265	3531	322	3581	349	3644	427
3466	213	3532	321	3582	350	3645	427
3466-3469	222	3533	320	3582a	369	3646, 3647	Omitted
3470-3475	221	3534	319	3583	353	3648-3649	428
3476	286	3535	326	3584	355	3650	429
3477	287	3536	325	3585	339	3651	430
3478	288	3537	399	3586	356	3652-3656	433
3479	289	3538	400	3587	357	3657	431
3480	291	3538	403	3588	358	3658-3660	432
3481	292	3539	399	3589	357	3661	156
3482	293	3540	399	3590	48	3662	155
3483	290	3541	327	3591	49	3663	157
3484	291	3542	402	3592	50	3664	162
3485	371	3543	328	3592	51	3665	163
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3488	272	3545	359	3594	54	3667	165
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3490	275	3547	360	3596	56	3669	167
3491	276	3548	363	3597	Omitted	3670	168
3492	277	3549	365	3597a	52	3671	170
3493	273	3550	366	3598	373	3672	169
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3499	270	3555	367	3605	376	3679	Omitted
3500	281	3556	Omitted	3606	378	3680	176
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3507	296	3560	334	3610	380	3683a	Repealed
3508	297	3561	334	3611	380	3684-3688	8
3509	298	3562	333	3612	380	3689-3690	241
3510	298	3563	334	3613	380	3691	242
3511	300	3564	338	3614	381	3692	244
3512	Omitted	3565	341	3615-3618	Omitted	3693	253
3513	323	3566	341	3619	381	3694	380
3514	301	3566	342	3620	381	3695	245
3515	303	3567-3568	344	3621-3622	382	3696	Omitted
3515a	306	3569	15	3623	380	3697	12
3515a	307	3569	346	3624	380	3698	28
3516	309	3570	349	3625	383	3699	Repealed
3517	310	3571	293	3626	384	3700	29
3518	311	3571	332	3626	414	4102	4
3519	312	3571	348	3627-3629	385	4103	5
3520	312	3571	349	3630	235	4104	3
3521	312	3572	346	3631	386	4105	13
3522	313	3572	348	3632	387	4105	14
3523	313	3573-3575	349	3633	376	4105	16



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Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section	Civ.St. Article	Probate Code Section
8290	57 note	8294	67	8298	70	8302	97
8291	66	8295	68	8299	90	8303	98
8292	67	8296	61	8300	89	8304	99
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## CHAPTER ONE. LEVY OF TAXES AND OCCUPATION TAXES

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### Art. 7041. Board Constituted

The Governor, Comptroller and State Treasurer are constituted a board to calculate the ad valorem tax to be levied and collected each year for State and public free school purposes.  
[Acts 1925, S.B. 84.]

### Art. 7042. Certificate to Comptroller

Each tax assessor shall make a statement to the Comptroller on or before July 15th of each year showing as nearly as can be ascertained from his inventories or assessments the total amount of property in each county subject to taxation; provided, that the tax for State and public free school purposes shall not be calculated and carried out upon said rolls.  
[Acts 1925, S.B. 84.]

### Art. 7043. Ascertaining Tax Rate; Formula

Within five (5) days after the Comptroller has received such certified statements from every Assessor within this State, said Board shall meet for the purpose of calculating the ad valorem rate of taxes to be collected for the State and public free school purposes. In calculating said rates the Board shall calculate the same by the following rules and upon the following basis: they shall find, by adding together all the property subject to taxation in all counties as shown by the certified statements returned by the Assessors, the total valuation of all property within this State subject to ad valorem taxes. They shall find, by adding together the sums appropriated by the Legislature, which will or which may become due by the State, during the following fiscal year, the amount fixed by the Board of Education for public free school purposes, as the State apportionment, the total sum of which will or which may become due by the State, during the following fiscal year. They shall find, by adding all sums paid into the State Treasury as delinquent ad valorem taxes and interest and penalties thereon during the first half of the current calendar year and latter half of the preceding calendar year and all sums which may be expected to be paid as taxes for State purposes from all sources other than ad valorem taxes, the total sum expected to be collected from all said sources. They shall find, by subtracting from the total sum which will or which may become due by the State during the succeeding fiscal year, the total sum which may be expected to be paid as taxes for State purposes from all sources other than current ad valorem taxes, the total sum for State purposes which must be collected by current ad valorem taxes. They shall add to such remainder twenty (20) per cent of said remainder. They shall add the total sum for State purposes which must be

collected by ad valorem taxes added to twenty (20) per cent of such total sum by the quotient of the total valuation of all property within this State divided by one hundred (100). The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for State purposes; provided that said quotient shall not be run to more than three (3) decimals. The rate for State purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school purposes, said Board shall take into consideration the number of children in the State within the scholastic age, to be determined from the most recent official school census; in arriving at the rate that shall be fixed for public free school purposes, said Board shall set the rate so that it will yield the amount per student that has been previously fixed by the Board of Education, provided the rate so fixed for any year shall not exceed the rate fixed by law.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., 3rd C.S., p. 527, ch. 33, § 1; Acts 1931, 42nd Leg., 2nd C.S., p. 53, ch. 32, § 1; Acts 1939, 46th Leg., p. 625, § 1; Acts 1943, 48th Leg., p. 260, ch. 160, § 1; Acts 1945, 49th Leg., p. 75, ch. 53, § 1.]

#### Art. 7044. Certify Rate to Tax Assessor

The Comptroller shall certify to the tax assessor of each county through registered letter, the rate of taxes for State purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the State and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the State for State purposes, and also the taxes due for public free school purposes, on all taxable property within his county as set out in the preceding article, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the county clerk, and to be returned to the Comptroller. After he has so completed the said copies of the tax rolls, he shall return to the Comptroller a copy of the same.

[Acts 1925, S.B. 84.]

#### Art. 7044a. Tax Rate for Succeeding Taxable Year; Notice to Assessor-Collector

Sec. 1. From and after January 1, 1966, all taxing authorities which use the services of the county tax assessor-collector, either to assess or collect taxes for such taxing authority, shall, on or before July 20 of each year, notify the county tax assessor-collector whose services are to be used by the taxing authority of the tax rate for the succeeding taxable year adopted by the taxing authority.

Sec. 2. In the event any taxing authority using the services of the county tax assessor-collector for either assessing or collecting taxes of the taxing authority fails to notify the county tax assessor-collector of the tax rate adopted by the taxing authority, prior to July 20, as provided in Section 1 of this

Act, the tax rate for the succeeding year shall be the tax rate for the preceding year, rather than the tax rate adopted by the taxing authority, and in no event shall a new tax rate be in force and effect unless notification of such tax rate is furnished the county tax assessor-collector prior to July 20 of each year.

Sec. 3. In compiling the tax roll for a taxing authority using the services of the county tax assessor-collector, the county tax assessor-collector shall use the rate furnished him by the taxing authority prior to July 20 of each year, or, in the event the county tax assessor-collector has not been furnished a new tax rate, the county tax assessor-collector shall use the tax rate adopted for the preceding taxable year by the taxing authority.

[Acts 1965, 59th Leg., p. 729, ch. 343, eff. June 9, 1965.]

#### Art. 7045. County Rate

The commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the Comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls.

[Acts 1925, S.B. 84.]

#### Art. 7045a. Expired May 1, 1945

This article, derived from Laws 1943, 48th Leg., p. 381, ch. 256, § 3, contained provisions identical with those of article 7045 and additional provisions relating to levy of taxes when any member of Commissioners Court or the county Judge was in military service. It provided that it should be effective until the date set out in section 1 of the act which suspended the provisions of article 7045 until May 1, 1945.

Art. 7046. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7047. Repealed by Acts 1930, 41st Leg., 5th C.S., pp. 168, 169, ch. 34, §§ 2, 3; Acts 1931, 42nd Leg., p. 111, ch. 73, § 12; Acts 1931, 42nd Leg., 2nd C.S., p. 61, ch. 37, § 1; Acts 1933, 43rd Leg., p. 383, ch. 153, § 23; Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 23; Acts 1941, 47th Leg., p. 269, ch. 184, Art. III, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, Art. XI, § 1; Acts 1943, 48th Leg., p. 86, ch. 67, § 22; Acts 1943, 48th Leg., p. 654, ch. 372, §§ 3, 5-7; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. II, § 1; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

#### Art. 7047a. Occupation Tax on Stock Exchanges

There shall be levied on and collected from every person, firm, corporation, or association of persons owning, operating, managing, controlling, or pursuing the business or occupation of any cotton exchange quotation service in this State, or furnishing quotations on the stock market on grain, cotton, or other commodities, or stocks and bonds, and who maintain an office or place of business, or branch office, and have a bulletin board or other means of

furnishing quotations on the stock market, an annual State occupation tax of Two Hundred and Fifty (\$250.00) Dollars, which shall be paid annually in advance, or as otherwise provided by law for the payment of occupation taxes, on each and every separate establishment, office, branch office, or place of business; provided, the tax herein levied shall be only One Hundred (\$100.00) Dollars for each person, firm or corporation which is a member of only one commodity exchange; provided, this Article shall not apply to any person, firm or corporation, or association of persons who furnish gratuitously market quotations to any person desiring the same and who are not engaged in the business of furnishing market quotations and without intent to solicit or accept orders for contracts, or contracts for future deliveries or sales of any commodity, stock or bonds; provided, further, any person, firm or corporation liable for a tax under this Article shall not be required to pay the tax under Sections 8 and 12 of Article 7047, but shall pay the tax provided by this Article; provided, further, each county or city in which same is operated may levy one-half the occupation tax herein provided for in the manner now provided by Article 7048.

[Acts 1930, 41st Leg., 5th C.S., p. 116, ch. 4, § 1.]

**Art. 7047a-1. Repealed by Acts 1936, 44th Leg., 3rd C.S., p. 2040**

**Arts. 7047a-2 to 7047a-19. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Arts. 7047a-19a, 7047a-19b. Repealed by Acts 1957, 55th Leg., p. 70, ch. 34, § 2**

**Art. 7047a-20. Comptroller of Public Accounts to Collect Occupation Taxes**

#### Authority to Collect

Sec. 1. The Comptroller of Public Accounts of the State of Texas is, from January 1, 1942, the effective date of this Act, authorized and required to collect, and all persons, firms, corporations, or associations shall pay to the Comptroller of Public Accounts, all State occupation taxes levied upon any occupation or business by Article 7047, Revised Civil Statutes of Texas of 1925, and House Bill No. 514, Acts of 1931, Forty-second Legislature, page 447, Chapter 267,<sup>1</sup> and House Bill No. 20, Acts of 1927, Fortieth Legislature, page 324, Chapter 220,<sup>2</sup> any law or parts of laws to the contrary notwithstanding.

<sup>1</sup> Former art. 7047d and Penal Code art. 489a (Unconstitutional).  
<sup>2</sup> Former art. 7429a and Penal Code art. 1137a (Repealed).

#### Rules and Regulations

Sec. 2. The Comptroller of Public Accounts shall have the power and authority to make and publish rules and regulations, not inconsistent with any existing laws or with the Constitution of this State or of the United States, for the enforcement of the provisions of this Act and the collection of revenues hereunder.

#### Forfeiture for Violation of Rules and Regulations

Sec. 3. If any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts or violate the same, he shall forfeit to the State the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

#### Certified Claim as Evidence

Sec. 4. If any person, firm, corporation, or association of persons engaging in or pursuing any occupation on which, under the laws of this State, an occupation tax is imposed, who fails or refuses to pay such tax, and it becomes necessary to intervene in any manner for the establishment of collection of said tax claims or penalties provided for under the laws of this State, in any judicial proceedings, a claim showing the amount of tax due the State, certified to by the Comptroller of Public Accounts or his chief clerk, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided however, that the incorrectness of said claim may be shown.

#### Venue in Civil Suits

Sec. 5. Venue of any civil suit or other civil proceedings filed under the provisions of this Act shall be in a court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

#### Venue in Prosecutions

Sec. 6. Venue of a prosecution for violation of any provision of this Act shall be in Travis County, Texas, or in the county where the offense occurred.

#### Repeals; Saving Clause

Sec. 7. All laws and parts of laws in conflict herewith and requiring the Assessors-Collectors of the various counties of the State to collect State occupation taxes levied by Article 7047, Revised Civil Statutes of Texas of 1925, and House Bill No. 514, Acts of 1931, Forty-second Legislature, page 447, Chapter 267,<sup>1</sup> and House Bill No. 20, Acts of 1927, Fortieth Legislature, page 324, Chapter 220,<sup>2</sup> are hereby expressly repealed. Provided, however, that all occupation taxes, penalties, and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Act before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-ex-

isting law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

<sup>1</sup> Former art. 7047d and Penal Code, art. 489a (Unconstitutional).  
<sup>2</sup> Former art. 7429a and Penal Code, art. 1137a (Repealed).

Partial Invalidity

Sec. 8. If any article, section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases should be declared unconstitutional.

[Acts 1941, 47th Leg., p. 1393, ch. 631.]

**Art. 7047b. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7047c. Cigarette Tax**

Sec. 11. In order to supplement the State's Available School Fund, and to reduce the burdens of ad valorem taxation on the farms and homes and other property of the people, there is hereby levied a tax on all sales in intrastate commerce, in this State of cigarettes, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand of One Dollar and fifty cents (\$1.50) per thousand, and on those weighing more than three pounds per thousand of Three Dollars and sixty cents (\$3.60) per thousand. Such tax shall be paid only once, on account of any cigarettes so sold, by the person, firm or corporation making the first sale thereof in intrastate commerce in this State, and payment shall be evidenced by stamps purchased from the State Treasurer and properly cancelled and securely affixed to the package or parcel containing the same, covering the amount of the tax thereon as levied by this Act, provided that such stamps may be purchased and cancelled and affixed to such package or parcel by a manufacturer or distributor outside this State, in which case no further payment of tax shall be required.

[Acts 1931, 42nd Leg., p. 111, ch. 73.]

**Art. 7047c-1. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7047c-2. Repealed by Acts 1959, 56th Leg., p. 814, ch. 371, § 3**

**Art. 7047c-3. Cigarette Tax Inapplicable to Sales To or By United States Military or Naval Posts, Camps or Exchanges; Civilians, Purchases By; Limitation on Sales without Tax**

Posts, Etc., Recognized for Tax Purposes as Agencies of Government

Sec. 1. Post, Camp, or Unit Exchanges established and operated within the State of Texas, by

the United States Military, Naval or Marine forces and not otherwise, on Military, Naval or Marine Posts, Camps, or Reservations, including any locality within this state where a cantonment camp is located and erected, where officers, soldiers, sailors, nurses, or marines of the United States Army, Navy or Marine Corps are being trained, are hereby declared to be, and are recognized only for such tax purposes as are hereinafter set out, instrumentalities and agencies of the United States Government.

Application

Sec. 2. It is further provided that the provisions of this law shall extend to and apply to any authorized branch of a Post, Camp or Unit Exchange which may be established for the exclusive benefit of the officers, soldiers, sailors, nurses or marines in the Army, Navy or Marine Corps of the United States at any time that said officers, soldiers, sailors, nurses or marines shall be on authorized military maneuvers. It being the express intent of the Legislature by this Act to allow soldiers, sailors, nurses and marines in the Army, Navy and Marine Corps of the United States, and no others, to purchase cigarettes for their exclusive use and not otherwise, from said Camp, Unit, or Post Exchange, and to consume or smoke the same without paying the tax imposed upon cigarettes used or otherwise disposed of in this state by Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature. It is also expressly provided that this law shall not be construed as authorizing any civilian employee of the United States Government or any person or persons whomsoever, other than officers, soldiers, sailors, nurses and marines of the Army, Navy or Marine Corps to purchase cigarettes free of the State Tax from a Camp, Unit, or Post Exchange, or on authorized military maneuvers or to use, consume or smoke said cigarettes without paying the State Tax as provided by the said law cited hereinabove.

All persons, except officers, soldiers, sailors, nurses and marines shall be subject to the tax imposed upon the use of cigarettes by the said Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, and no officer, soldier, sailor, nurse or marine or person shall sell or furnish cigarettes upon which the State Tax has not been paid to any civilian employee of the United States Government or to any person or persons other than officers, soldiers, sailors, nurses and marines serving as such in the Army, Navy or Marine Corps of the United States. Provided further, that no civilian employee of the United States Government or other person whomsoever, except such officers, soldiers, sailors, nurses and marines shall purchase or receive cigarettes without the State Tax Stamp being affixed to the package to evidence the payment of the tax levied by law from any such Post, Camp or Unit Exchange, or shall use or consume cigarettes upon which said tax has not been paid to the state and the possession by any said civilian employee of the United States Government or person other than said

officers, soldiers, sailors, nurses and marines of cigarettes without the State Tax Stamp affixed to the package at any place in the State of Texas shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of sale or use without payment of the tax levied by law.

**Removal of Cigarettes from Post without Stamp Tax Affixed. Forbidden**

Sec. 3. It is further provided that no officers, soldiers, sailors, nurses or marines, in the Army, Navy, or Marine Corps of the United States shall remove from the confines of any military or naval post or reservation in this state, cigarettes without the State Tax Stamp affixed to the package in quantities of more than forty (40) cigarettes or shall resell, distribute or furnish cigarettes without the State Tax Stamp affixed to the package to any person, persons, firm or corporation not authorized to use or consume the same without the State Tax having been paid thereon. Any person, firm, or corporation who knowingly removes from such reservations any cigarettes or sells, furnishes, purchases or receives any cigarettes in violation of this provision shall be subject to the penalties provided in this law. The possession of more than forty (40) cigarettes by any said officers, soldiers, sailors, nurses or marines without the State Tax Stamp affixed to the package at any place in Texas other than a military or naval post or reservation shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of a sale in Texas without the State Tax Stamps affixed.

**Law Relating to "First Sale" Inapplicable**

Sec. 4. It is further recognized, declared and provided that the provision of Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended by Senate Bill No. 247, Chapter 310, Acts of the Regular Session of the 45th Legislature, relating to "first sale" of cigarettes does not apply to sales by such Post, Camp or Unit Exchanges to officers, soldiers, sailors, nurses and marines of the Army, Navy and Marine Corps under the conditions specified in the preceding sections of this law or to sales in accordance with such specified conditions and for such resale purposes to such Post, Camp or Unit Exchanges by a licensed cigarette distributor in Texas.

**Violations**

Sec. 5. Any person, firm, or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars. Each violation of any of the provisions of this Act shall be considered a separate offense.

**Partial Invalidity**

Sec. 6. If any part or portion of this Act shall be declared to be unconstitutional, the remainder thereof shall nevertheless remain in full force and effect. [Acts 1941, 47th Leg., p. 25, ch. 14; Acts 1943, 48th Leg., p. 407, ch. 275, § 1.]

Art. 7047cc. Repealed and Re-enacted by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1

Art. 7047cc-1. Repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31

Art. 7047cc-2. Repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31

Art. 7047d. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7047e. Repealed by Acts 1941, 47th Leg., p. 723, ch. 449, § 1

Art. 7047f. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7047g. Repealed by Acts 1943, 48th Leg., p. 309, ch. 200, § 1

Arts. 7047h to 7047k. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7047k-1. Additional Tax on Motor Vehicle Sales

**Amount of Tax; Deductions; Motor Vehicle Exchanges**

Sec. 1. (a) In addition to all other taxes, there is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to one-tenth ( $\frac{1}{10}$ ) of one per cent (1%) of the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit, or exchange of other property, or a combination of these. In the event the consideration received by the seller includes any tax imposed by the Federal Government, then such Federal tax shall be deducted from such consideration for the purpose of computing the amount of tax levied by this Article upon such retail sale.

(b) In all cases of retail sales involving the exchange of motor vehicles, the party transferring the title to the motor vehicle having the greater value shall be considered the seller, and no tax is imposed upon the transfer of a motor vehicle traded in upon the purchase price of some other motor vehicle.

**Use Tax; Amount**

Sec. 2. In addition to all other taxes, there is hereby levied a use tax upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State, or by firms or corporations domiciled or doing business in this State. Such tax shall be equal to one-tenth of one per cent of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person,

firm, or corporation operating said motor vehicle upon the public highways of this State.

#### Definitions

Sec. 3. (a) The term "sale" or "sales" as herein used shall include instalment and credit sales, and the exchange of property, as well as the sale thereof for money, every closed transaction constituting a sale. The transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(b) The term "retail sale" or "retail sales" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

(c) The term "motor vehicle" as herein used shall mean every self-propelled vehicle in, or by which, any person or property is or may be transported upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks; but this definition shall not include tractors used exclusively to pull farm machinery or road-building machinery.

#### Fees and Taxes as Additional to Other Fees and Taxes

Sec. 4. The license fees and taxes imposed by or under this Article shall be in addition to any and all license fees and taxes imposed by or under any other law of this State.

#### Collection

Sec. 5. The taxes levied in this Article shall be collected by the Assessor and Collector of Taxes of the county in which any such motor vehicle is first registered or first transferred after such a sale; the Tax Collector shall refuse to accept for registration or for transfer any motor vehicle until the tax thereon is paid.

When a tax becomes due on a motor vehicle purchased outside of this State and brought into this State for use upon the highways, the person, firm, or corporation operating said motor vehicle upon the public highways of this State shall pay the tax imposed by Section 2 to the Tax Collector of the county in which such motor vehicle is to be registered. The tax shall be paid at the time application is made for registration of said motor vehicle, and the Tax Collector shall refuse to issue the registration license until the tax is paid.

#### Affidavit of Purchaser; Filing

Sec. 5. (a) At the time the tax herein levied is paid to said Tax Collector the purchaser shall file with said Tax Collector the affidavit of such purchaser (or if a corporation the affidavit of the President, Vice-president, Secretary, or Manager) setting forth the then value in dollars of the total consideration received or to be received by such seller or his nominee, whether in money or other thing of value.

#### Receipts; Duplicates as Permanent Records; Forwarding Money Collected

Sec. 6. The Tax Collector shall issue a receipt to the person paying taxes prescribed hereunder, making two (2) duplicate copies of said receipt, the form of said receipt to be prescribed by the Comptroller of Public Accounts. Between the first and fifteenth of April, July, October and January, the Tax Collector shall forward ninety-eight per cent (98%) of the money collected hereunder during the preceding three (3) months to the Comptroller of Public Accounts, together with one duplicate copy of each of the receipts issued by him to persons paying the tax to the Collector. He shall retain the other duplicate receipt as a permanent record in his office together with two per cent (2%) of the money collected as fees of office, or paid into the officers salary fund of the county as provided by general law.

#### Violations; Penalties

Sec. 7. If any person shall knowingly operate any motor vehicle, such as defined in this Article, upon the highways of this State without the tax thereon having been paid as herein levied and provided, he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Ten Dollars (\$10) nor more than Five Hundred Dollars (\$500), or confined in the county jail for not less than one (1) day nor more than thirty (30) days or by both such fine and imprisonment.  
[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. VI.]

**Arts. 7047l to 7047m. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

#### Art. 7047n. Occupation Tax on Sulphur Producers

Sec. 1. Sulphur Producers: In addition to all other taxes, each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, wells, or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly, on the first day of July and October of 1950, and on the first day of January, April, July and September of 1951, a report to the Comptroller in this State, or if such person be other than individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date an amount equal to ten per cent (10%) of \$1,272 per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter. The months of July and August of 1951 shall constitute a quarter for the purposes of this Section.

Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Article

within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to ten per cent (10%) of the taxes due, and such tax and penalty shall draw interest at the rate of six per cent (6%) per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or howsoever organized, formed, or created.

The Comptroller may require such other information and such additional reports as he may deem advisable.

This tax is levied on sulphur produced from the effective date of this Section and prior to September 1, 1951, and not thereafter.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. III, § 1.]

#### Art. 7047o. Expired

#### Art. 7048. County Ad Valorem, Etc.

Each commissioners court shall have power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to a State tax by the provisions of this title; and, for the payment of debts incurred prior to September 1883, and for the erection of public buildings and other permanent improvements they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and for the improvement of public roads, under the restrictions provided by law for the levy of a road tax, a tax not to exceed fifteen cents on the one hundred dollars valuation, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property tax paying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; provided any one wishing to pursue any of the vocations named in this chapter, upon which any county occupation tax may be levied, may do so by paying the same quarterly. The receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named. The provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners court to levy a different rate of tax. No person

shall be allowed license for keeping any nine or ten pin alley, or anything of the kind used for profit, for a period of less than twelve months. The governing body of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the commissioners court. In all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the tax collector shall at once demand of the receiver or assignee of said dealer payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes, and said taxes, until paid, shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. [Acts 1925, S.B. 84.]

#### Art. 7048a. Additional County Tax Levy for Flood Control and Roads; Discontinuance of State Levy

State Ad Valorem Tax Discontinued from Jan. 1, 1951

Sec. 1. From and after January 1, 1951, no State ad valorem tax shall be levied upon any property within this State for general revenue purposes, except as hereinafter provided.

State Levy for 1949 and 1950

Sec. 1a. The Automatic State Tax Board as created by Article 7041 Revised Civil Statutes of Texas, 1925, shall levy and order collected for each of the years 1949 and 1950, on all property in the State subject thereto an ad valorem tax of thirty cents (30¢) on the One Hundred Dollar (\$100) valuation for State purposes. The tax so levied shall be and is hereby allocated as now or as may hereafter be provided by law.

County Levy for Flood Control and Farm-To-Market and Lateral Roads; Inapplicable when State Taxes Donated

Sec. 2. From and after January 1, 1951, the several counties of the State be and they are hereby authorized to levy, assess and collect ad valorem taxes upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars (\$3,000) value of residential homesteads, not to exceed thirty cents (30¢) on each One Hundred Dollars (\$100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of the State, provided the revenue therefrom shall be used as provided in this Act for the construction and maintenance of Farm-to-Market and Lateral Roads or for Flood Control and for these two (2) purposes only.

Provided, that the provisions of this Act shall not apply to those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted for such period of time as the State Automatic Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, but shall apply to said counties at the end of the period of said donation or when all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur. In the event that the donation to any such county or political subdivision is for less than the full amount of State ad valorem taxes so levied, the portion of such taxes remaining over and above such donation shall be retained by said county or subdivision and used in accordance with the provisions of this Act.

#### Funds to which Taxes Credited

Sec. 3. Taxes levied and collected under the provisions of this Act shall be credited by the Commissioners Court to separate funds known as the Farm-to-Market and Lateral Road Fund, to be used solely for Farm-to-Market and Lateral Roads within such county, and to the Flood Control Fund, to be used solely for Flood Control purposes within such county, said credits to be made proportionately in accordance with the allocation adopted at the election called under the provisions of Sections 7 and 8 of this Act.

#### Jurisdiction and Use of Farm-To-Market and Lateral Road Funds

Sec. 4. The funds placed in the Farm-to-Market and Lateral Road Fund shall be under the jurisdiction and control of the Commissioners Court of said county and all or part of said fund may be used in cooperation with the State Highway Department in acquiring right-of-ways and in constructing and maintaining Farm-to-Market and Lateral Roads.

#### Jurisdiction and Use of Flood Control Funds

Sec. 5. The funds transferred to the Flood Control Funds shall be under the jurisdiction and control of the Commissioners Court of such county and shall be used solely for Flood Control purposes. All or part of said funds may be used in connection with the plans and programs of the Federal Soil Conservation Service and the State Soil Conservation Districts and the State Extension Service, Conservation and Reclamation Districts, Drainage Districts, Water Control and Improvement Districts, Navigation Districts, Flood Control Districts, Levee Improvement Districts and Municipal Corporations, and such funds may be expended by the Commissioners Court in accordance with this Act for flood control purposes, including all soil conservation practices such as contouring, terracing, tank building, and all other practices actually controlling and conserving moisture and water, within any said county and political subdivision thereof for Flood Control and Soil Conservation programs, provided that such plans for improvement are approved by such county and political subdivision.

#### Soil, Water, Erosion and Drainage Program

Sec. 5a. To this end, the Commissioners Court may, in its discretion, engage the services of a Federal or State Soil Conservation Engineer or of Extension Service personnel, in devising and planning a soil, water, erosion and drainage program coming within the purview of this Act and consistent with the expenditure of said funds for Flood Control purposes only, and may acquire whatever machinery, equipment and material is useful and necessary in carrying out said Flood Control program, provided such machinery and equipment shall be made available to farm and ranch owners for purposes consistent with the provisions of this Act on an out-of-pocket expense basis, not including depreciation.

#### Equitable Distribution of Benefits

Sec. 6. Both the Farm-to-Market and Lateral Road Fund and the Flood Control Fund shall be expended so as to equitably distribute as nearly as possible the benefits derived from such expenditures to the various Commissioners' precincts in accordance with the taxable values therein.

#### Submission to Voters

Sec. 7. Before any county shall levy, assess and collect the tax provided for herein the question shall by the Commissioners Court of the county be submitted to a vote of the qualified property taxpaying voters of such county at an election called for that purpose, either on said Commissioners Court's own motion, or upon petition of ten per cent (10%) of the qualified property taxpaying voters of said county as shown by the returns of the last general election. Said election shall be ordered at a regular session of said Commissioners Court and such order shall specify the rate of tax to be voted on, not to exceed thirty cents (30¢) on each One Hundred Dollars (\$100) valuation of taxable property within such county, shall state the date when said election shall be held, and shall appoint officers to hold said election in accordance with the election laws of this State. Provided, however, that the proposition submitted to the qualified property taxpaying voters at said election may provide that the tax at a rate not to exceed thirty cents (30¢) on each One Hundred Dollars (\$100) valuation may be used for the construction and maintenance of Farm-to-Market and Lateral Roads or for Flood Control purposes, either or both, as the Commissioners Court may determine (in which event the ballots shall have written or printed thereon, "For the tax of not exceeding \_\_\_\_\_ cents on each One Hundred Dollars (\$100) valuation," and the contrary thereof, specifying the tax to be voted upon), or the proposition may provide for a specific maximum tax for Farm-to-Market and Lateral Roads purposes and a specific maximum tax for Flood Control purposes, the total of the two (2) specific maximum taxes not to exceed thirty cents (30¢) on the One Hundred Dollars (\$100) valuation (in which event the ballots shall have written or printed thereon, "For a Farm-

to-Market and Lateral Roads tax of not exceeding \_\_\_\_\_ cents and a Flood Control tax of not exceeding \_\_\_\_\_ cents, on the One Hundred Dollars (\$100) valuation," and the contrary thereof, specifying the specific taxes to be voted upon). Provided, further, that elections may subsequently be called and held in the same manner for the purpose of changing the amount of the maximum tax within the limit of thirty cents (30¢) on the One Hundred Dollars (\$100) valuation, or for changing the amounts of the maximum specific tax voted for each purpose; provided, however, that such tax or taxes may not be reduced to an extent which would result in the impairment of any bonds or warrants theretofore issued under the provisions of Section 10 of this Act.

Notice of Election; Qualification of Voters

Sec. 8. The County Judge shall cause notice of said election to be posted at a public place in each voting precinct in said county not less than fourteen (14) days next before said election and to be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said county, the date of the first publication to be not less than fourteen (14) days prior to the date set for the election, which notice shall be a substantial copy of the election order, and only those shall be entitled to vote at said election who are qualified, property taxpaying voters in said county, and who have duly rendered the same for taxation.

Tax Levied if Majority Vote in Favor

Sec. 9. If a majority of the qualified property taxpaying voters, voting at said election, shall vote in favor of said tax, then the same shall be annually levied, assessed and collected as other county ad valorem taxes are levied, assessed and collected.

Bonds or Time Warrants

Sec. 10. After an election has been held under the provisions of Sections 7 and 8 of this Act, at which election a majority of the qualified, property taxpaying voters, voting at said election, voted in favor of the tax, the Commissioners Court may issue either negotiable county bonds or county time warrants for the purpose of the construction and/or improvement of Farm-to-Market and Lateral Roads, or for the purpose of constructing permanent improvements for Flood Control purposes; provided, however, that any such bonds or warrants must have been authorized by a majority of the qualified property taxpaying voters who have duly rendered the same for taxation voting at an election duly called by the Commissioners Court, such bonds and warrants to be issued and the taxes to be levied and collected in payment thereof in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, and provided further that each proposition shall be separately submitted to the voters at such election.

State Tax in Counties, Etc., where Tax Donated

Sec. 10(a). (1) Beginning in the year 1951 and each year thereafter the State Automatic Tax Board created by Article 7041 of the Revised Civil Statutes of Texas, 1925, shall cause to be levied annually in each county, political subdivision or other defined area, the full thirty cents (30¢) State ad valorem tax for general revenue purposes, the proceeds of which heretofore were donated and granted by the Legislature to certain counties, political subdivisions or other defined areas for the purpose of carrying out and performing actions of preventing calamities, improving, protecting and reclaiming certain areas for and on behalf of the State as more fully declared in each applicable law or laws making such donation or grant and said Board shall continue to levy such tax at said rate in each such designated area until the bonds or other obligations of said areas authorized or incurred in connection with the performance of such action on behalf of the State shall have been fully paid or discharged or until the expiration date of such donation or grant as may be determined from the law or laws making such grant or donation, whichever shall first occur.

(2) The provisions of Article 7043, Revised Civil Statutes of Texas, 1925, as amended setting up a formula to govern said Board in ascertaining the rate of tax to be levied for state general revenue purposes shall not apply from and after January 1, 1951. The rate of tax to be levied after said date shall be thirty cents (30¢) on each One Hundred Dollars (\$100) valuation as fixed by the amendment to Section 1-A, Article 8 of the Constitution, as adopted November 2, 1948.

(3) The tax assessors and collectors in each of such Counties shall continue to assess and collect such tax and make the proceeds thereof available to the donees or grantees in the manner provided by the law or laws making each such grant or donation. The moneys thus collected by said tax assessors and collectors and received by such grantees or donees shall be used and accounted for annually as prescribed by the law or laws making such grant or donation.

(4) In those instances where less than the full State general ad valorem tax was granted or donated, the portion of the money collected in excess of the amount donated or granted shall be retained by or paid over to the governing body of the county or political subdivision from which such tax is collected; and in the event that the amount of State general ad valorem tax granted, donated and collected is in excess of the amount needed to pay off and fully discharge all legal obligations authorized by law and which were incurred prior to the adoption of Section 1-a of Article VIII of the Constitution of Texas, then such excess shall be retained by or paid over to the governing body of the county or political subdivision from which such tax is collected; provided, however, that nothing herein shall be construed to limit or impair the right of the Upper Colorado

River Authority to receive and fully utilize the full amount of moneys heretofore donated and granted said Authority; and provided further, that nothing in this Act shall apply to, nor in anywise affect, the State general ad valorem tax heretofore granted or donated to the Central Colorado River Authority, the boundary of which is co-extensive with that of Coleman County; and provided further, that nothing contained herein shall be construed to diminish or affect any right or authority of the Brazos River Conservation and Reclamation District to receive, obligate or expend the full amount of Three Hundred Nine Thousand (\$309,000.00) Dollars each year heretofore donated for the full period of the donation. In the discretion of said governing body such excess shall be used either for the construction and maintenance of farm-to-market roads, or for flood control, only within the county, political subdivision, or defined area from which such tax is collected. The moneys thus retained or paid over shall be fully reported each year to the Comptroller of Public Accounts at the same time such Assessor-Collector makes his annual report as required by law, and the governing body of the county, political subdivision, or defined area thus retaining or being paid such excess money shall likewise report annually to the Comptroller of Public Accounts the sum thus retained or held and the purpose for which it was used. The moneys thus retained or held or declared to be trust funds to be used only for the purpose herein named, and the use thereof for any other purpose shall constitute a misapplication of public money and the person or persons so offending shall be punished as provided for in Article 86 of the Penal Code of the State of Texas.

Partial Invalidity

Sec. 11. Should any Section of this Act, or any part of any Section hereof, be held invalid, unconstitutional or inoperative, no other part or parts thereof shall be held affected thereby and the remaining provisions shall nevertheless stand effective and valid as if this Act had been enacted without such part or parts held to be invalid, unconstitutional or inoperative.

[Acts 1949, 51st Leg., p. 849, ch. 464; Acts 1951, 52nd Leg., p. 672, ch. 389, § 1.]

**Art. 7048b. Contracts for Accomplishment of Plans and Programs**

The Commissioners Court of any county in the State may enter into contracts for the accomplishment of plans and programs for flood control and soil conservation with the Federal Soil Conservation Service, State Soil Conservation Districts, State Extension Service, Conservation and Reclamation Districts, Drainage Districts, Water Control and Improvement Districts, Navigation Districts, Flood Control Districts, Levee Improvement Districts and Municipal Corporations, as provided in Section 5 of Chapter 464 of the Acts of the Fifty-first Legisla-

ture, 1949,<sup>1</sup> and the responsibility for carrying out such plans and the expenditure of funds of the county and such agencies, districts and municipal corporations may by such agreement be divided between the parties or delegated to either the county or to one or more of said agencies, districts and municipal corporations, and such contracts may be for a specified term of years or until certain plans or programs have been accomplished, provided further that in the event any such agency, district or municipal corporation shall issue its bonds payable from and secured by revenues to be derived from any such contract it may be provided therein that such contract will continue in effect until such bonds, or any refunding bonds issued in lieu thereof, have been fully paid. Any contracts of the kind authorized hereby, which have heretofore been entered into, shall be valid and binding contracts.

[Acts 1951, 52nd Leg., p. 140, ch. 84, § 1; Acts 1955, 54th Leg., p. 1071, ch. 402, § 1.]

<sup>1</sup> Article 7048a, § 5.

**Art. 7049. Taxes Payable In What**

The taxes levied by this chapter are payable in currency or coin of the United States; provided, that persons holding scrip issued to them for services rendered the county may pay their county ad valorem taxes in such scrip.

[Acts 1925, S.B. 84.]

**Art. 7050. Books of Collector**

The tax collector shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit: January 1st, April 1st, July 1st, and October 1st, or within ten days thereafter, in which to require the returns to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under this chapter; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the Comptroller a transcript or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax. Nothing contained in this article is intended to affect the liability which, in the absence of this statute, would be incurred under any special enactment of this State.

[Acts 1925, S.B. 84.]

**Art. 7051. Collector Furnished Books, Etc.**

The Comptroller shall furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter.

[Acts 1925, S.B. 84.]

**Art. 7052. Pay in Advance**

The payment of the specific tax herein provided for shall be required by the tax collector to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under any provision of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much of the stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding.

[Acts 1925, S.B. 84.]

**Art. 7053. Tax Receipts Furnished**

The Comptroller shall cause occupation tax receipts for each occupation to be printed with his signature, for all occupations, payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount of the tax, and have blanks for the year, month and name of licensee, and also have a blank space for the signature of the collector; these receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub officially. No person shall pursue any occupation, unless he has a receipt signed as herein provided by the Comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said license.

[Acts 1925, S.B. 84.]

**Art. 7054. Account of Occupation Tax Receipts**

When the Comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the Comptroller. The Comptroller shall furnish the commissioners court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors.

[Acts 1925, S.B. 84.]

**Art. 7055. Transfer of License**

Any person, firm, corporation, or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, may transfer the same on the books of the officer by whom the same was issued.

[Acts 1925, S.B. 84.]

**Art. 7056. Purchaser of Unexpired License**

The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof, provided that such assignee or purchaser shall, before following such occupation, comply in all other respects with the requirements of the law provided for in the original applications for such licenses. Nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time. Whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation, or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time.

[Acts 1925, S.B. 84.]

**Arts. 7057, 7057a. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7057b. Payment of License or Privilege Taxes Under Protest****Protest**

Sec. 1. Any person, firm or corporation who may be required to pay to the head of any department of the State Government any occupation, gross receipt, franchise, license or other privilege tax or fee, and who believes or contends that the same is unlawful and that such public official is not lawfully entitled to demand or collect the same shall, nevertheless, be required to pay such amount as such public official charged with the collection thereof may deem to be due the State, and shall be entitled to accompany such payment with a written protest, setting out fully and in detail each and every ground or reason why it is contended that such demand is unlawful or unauthorized.

**Suits for Recovery of Taxes or Fees**

Sec. 2. Upon the payment of such taxes or fees, accompanied by such written protest, the tax-payer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County,

Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any tax-payer all other tax-payers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporations or association of persons who have paid under protest such taxes or fees referred to in Section 1 hereof.

**Payment of Additional Taxes Under Protest after Filing Suit; Amendment of Petition; Jurisdictional Amount**

Sec. 2a. After such suit is filed in a court of competent jurisdiction in Travis County, and before such suit is tried by said court, said taxpayer pays additional taxes under protest, the grounds of protest being the same as in the original petition filed in said court, and the total of said taxes exceeds the jurisdiction of said court, then the taxpayer will be authorized to file suit within ninety (90) days after the payment of such additional taxes in a court in Travis County which has jurisdiction of the total amount of said taxes paid under protest, and when such suit is filed it shall be deemed to have been filed in conformity with the provisions of this Act. After any original petition has been filed in any court of competent jurisdiction seeking a refund of any taxes paid under protest it will not be necessary to amend such original petition to include further payments made under protest until five (5) days before such suit is ready for trial, on or before which time such petition shall be amended so as to include all payments made under protest after the filing of the original petition. This provision shall not be construed as dispensing with the necessity of paying said taxes as they become due and accompanying such payment with the written grounds of protest. Provided further, that if an appeal is taken from the final judgment rendered in such suit, the taxpayer will not be relieved of the duty of continuing paying said taxes under protest pending the appeal of said case; however, it will not be necessary for such taxpayer to file suit within ninety (90) days after the payment of such taxes, but the disposition of such taxes shall be governed by the outcome of the original suit.

**Application of Amendatory Act**

Sec. 2b. The provisions of this Act shall apply to all taxes paid under protest, and which taxes have not been finally determined to belong to the State.

**Lists Remitted to State Treasurer**

Sec. 3. It shall be the duty of such public official to transmit daily to the State Treasurer all money so

received, with a detailed list of all those remitting same, and he shall inform the State Treasurer in writing that such money was paid under protest as hereinabove provided. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each department; and the cashier of the Treasury Department shall keep a cash book to be called "Suspense Cash Book," in which to enter such deposit receipts. Upon the receipt of such money by the State Treasurer it shall be his duty and he is hereby required to immediately and forthwith place the same in State depositories bearing interest in the same manner as any other funds of the State required to be placed in such depositories at interest, and the State Treasurer shall further be required to allocate whatever interest is earned on such funds and to credit the amount thereof to such suspense account until the status of such money is finally determined as herein provided.

**Refunds and Warrants**

Sec. 4. If suit is not brought within the time and within the manner herein provided, or in the event it finally be determined in such suit that the sums of money so paid or any portion thereof, together with the pro rata interest earned thereon, belong to the State, then and in that event it shall be the duty of the State Treasurer to transfer such money from the suspense account to the proper fund of the State by placing the portion thereof belonging to the State in such fund by the issuance of a deposit warrant. When such deposit warrant or warrants are issued, they shall be entered in the cash book, and the proper fund to which such money is so transferred shall be properly credited therewith. In the event, however, that suit is brought by such taxpayer within the time and within the manner hereinabove provided, and it be finally determined that such money so paid by such taxpayer, or any part thereof, was unlawfully demanded by such public official and that the same belongs to such taxpayer, then and in that event it shall be the duty of the State Treasurer to refund such amount, together with the pro rata interest earned thereon, to such taxpayer by the issuance of a refund warrant, the same to be issued in separate series and to be used for making such refunds, to be styled and designated "Tax Refund Warrants" and such warrants shall be written and signed by the Comptroller and countersigned by the State Treasurer and charged against the suspense account, as hereinabove provided, and shall then be returned to the Comptroller and delivered by him to the persons entitled to receive the same.

**Extension to Prior Taxpayers**

Sec. 5. Any taxpayer who has heretofore paid any taxes or fees of the character embraced herein to such public official, accompanied by some form of protest, and which moneys are now being held in the suspense account, and who has not brought suit under the suspense account law for the recovery of same, and who is not embraced within or protected by any action which may now be pending for the

recovery of same, shall have ninety (90) days from the effective date of this Act within which to bring suit in the manner hereinabove provided. It is further provided and so directed that the head of department having heretofore received any such sums of money under protest which have not been disposed of, shall immediately, upon this law become<sup>1</sup> effective, notify said corporation having paid the same of the provisions of this law by mailing a copy of the same to such corporation or corporations.

<sup>1</sup> So in enrolled bill. Should probably read "becoming."

#### Application to Moneys in Suspense Account

Sec. 6. The provisions of this law directing the State Treasurer to place in the State depositories any taxes or fees paid under the provisions hereof and authorizing the State Treasurer to refund the principal, together with pro rata interest earned thereon, to any taxpayer who may be successful in recovering any sum of money in a suit as hereinabove provided, shall apply to such sums of money as have heretofore been paid by such taxpayer to the State Treasurer and which are now being held in the suspense account, where such taxpayer has brought suit or may bring suit as provided in Section 5 hereof or is embraced within and protected by any suit or cause of action which may now be pending for the recovery thereof, and in the event any such taxpayer should be successful in any such litigation, then and in that event the State Treasurer shall be required to return to such taxpayer the principal amount so recovered, together with the pro rata interest earned thereon from the effective date of this law; and provided further that such taxpayer who is successful in such suit and who has heretofore paid any such taxes or fees which are now held in the suspense account shall be entitled to the principal sum of the amount awarded to him by the court, together with the pro rata interest earned thereon, from the date of the deposit of such principal sum of money to the effective date of this law, and there is hereby appropriated out of any interest earned from the General State Depository Funds a sum of money which shall be sufficient to pay the pro rata amount of interest earned on the taxes or fees so recovered and it shall be the duty of the State Treasurer to allocate to and pay from the interest earned upon the General State Depository Funds such amount of interest as shall have been earned thereon.

Sec. 6a. Repealed by Acts 1934, 43rd Leg., 2nd C.S., p. 163, ch. 68, § 1.

#### Law as Cumulative

Sec. 7. The provisions of this law shall be cumulative of all laws relating to the payments of taxes or fees of undetermined status and for the holding thereof in the suspense account fund of the State Treasurer.

#### Partial Invalidity

Sec. 8. The provisions of this law are severable and if any part thereof should be declared unconsti-

tutional it shall not affect the remaining part or parts thereof, which shall remain in full force and effect, notwithstanding such invalid part or parts.

[Acts 1933, 43rd Leg., p. 637, ch. 214; Acts 1934, 43rd Leg., 2nd C.S., p. 163, ch. 68, § 1; Acts 1939, 46th Leg., p. 643, §§ 1 to 3; Acts 1961, 57th Leg., p. 438, ch. 212, § 1.]

### Art. 7057c. Oleomargarine Tax

#### Definitions

Sec. 1. That where used in this Act:

(a) The word "person" shall mean person, firm, partnership, association, and/or other form of joint enterprise, and/or every person as defined by law.

(b) "Wholesaler" as used in this Act, shall mean every person who in this State, in intrastate commerce, makes the first sale or distribution of any oleomargarine.

(c) "Wholesale" or "sale at wholesale" or "sell at wholesale" as used herein, shall mean the first sale or distribution made by any such wholesaler and shall include the first sale or distribution of any oleomargarine imported into this State from another State or country.

(d) "Distribution" shall mean the first dispensation or shipment, whether by sale or otherwise, by any wholesaler from any place in this State, whether to another place owned by a wholesaler or otherwise.

(e) The word "oleomargarine" shall mean all substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, neutral, margarine and nut-margarine; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, neutral, margarine and nut-margarine; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil, fish fat, coconut oil, palm oil and/or vegetable oils of any and all kinds, annatto, and other coloring matter, intestinal fat and offal fat, if (1) made in imitation or semblance of butter or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified or mixed in cream, milk, water, or other liquids, and containing moisture in excess of one (1) per centum of common salt. This section shall not apply to puff pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen (118) degrees Fahrenheit or more, nor to any of the following containing condiments and spices; salad dressings, or mayonnaise or mayonnaise dressings or mayonnaise products; nor to pharmaceutical preparations, oilmeals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

## Wholesalers' Statement to Comptroller

Sec. 2. That in addition to the taxes now provided for by law, each and every wholesaler, as defined in this Act, who is now engaged or may be hereafter engaged in his own name, or in the name of others, or in the name of representatives or agents in this state, in the sale of oleomargarine as herein defined, containing any fat and/or oil ingredient other than oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, cottonseed oil, peanut oil, corn oil, soya bean oil, milk fat, safflower, milo, and/or any other vegetable oil, shall not later than the fifteenth day of each calendar month render sworn statements to the State Comptroller of all such oleomargarine sold by such wholesaler in the State of Texas during the preceding calendar month, and pay an excise tax of Ten Cents (10¢) per pound on all such oleomargarine so sold as shown by such statement in the manner and within the time hereinafter provided.

## Certificates to be Filed

Sec. 3. All wholesalers of such taxable oleomargarine in the State of Texas shall file a duly acknowledged certificate with the State Comptroller on forms prescribed, prepared and furnished by him, which shall contain the name under which such wholesaler is transacting business within the State of Texas; such certificate shall state the place or places of business and location of distributing stations of such wholesaler in the State of Texas, the name and address of the manufacturing agent, the names and addresses of the several persons constituting the firm or partnership, and if a corporation, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general manager and attorney-in-fact. If such wholesaler is an association of persons, firm, partnership or corporation organized under the laws of another State, territory or nation, if it has not already done so, it must first comply with the laws of the State of Texas relating to the transaction of its appropriate business therein. No wholesaler, as herein defined, shall after the law goes into effect, sell any taxable oleomargarine until such certificate is furnished, as required by this Act.

## Statement as to Number of Pounds Sold

Sec. 4. Every wholesaler of such oleomargarine taxed by this Act shall render to the State Comptroller, on or before the fifteenth day of each month, on form prescribed, prepared and furnished by said Comptroller, a sworn statement of the number of pounds of taxable oleomargarine sold during the preceding calendar month, which statement shall be sworn to by one of the principal officers in case of a domestic corporation or by the resident general manager or attorney-in-fact in case of a foreign corporation, or by the managing agent or owner in case of a firm or association, and shall contain a statement of the quantities in pounds of taxable oleomargarine sold. Bills shall be rendered to dealers in taxable oleomargarine as herein defined. Said bills shall

contain a statement printed thereon in a conspicuous place that the wholesaler of such oleomargarine has assumed the liability to the State for the tax therein imposed and that said wholesaler will pay said tax on or before the fifteenth day of the following month.

## Date of Payment of Tax

Sec. 5. Said excise tax shall be paid on or before the fifteenth day of each month to the State Comptroller, who shall receipt the wholesaler therefor and place the same in the State Treasury to the credit of the General Fund of the State of Texas.

## Records

Sec. 6. Every wholesaler of such taxable oleomargarine shall keep a record in such forms as may be prescribed by the State Comptroller of all purchases, receipts, sales and distributions of such oleomargarine and such record shall at all times during the business hours of the day be subject to inspection and examination by the State Comptroller or his deputies, or such other officers as may be provided by law.

## Sticker Tags on Containers, Packages, Etc.

Sec. 7. All such taxable oleomargarine sold in containers, packages, or cases shall bear a sticker tag showing the date of invoice upon which the same was delivered, the name of the wholesaler of such oleomargarine, and shall contain a statement that the liability for the tax thereon has been assumed by such wholesaler.

## Unlawful Sale

Sec. 8. It shall be unlawful for any person, firm or corporation dealing in taxable oleomargarine to receive or accept any delivery or shipment of such oleomargarine from any wholesaler or to pay for the same, or to sell or offer the same for sale, unless the statement provided for in Section 7 appears upon the container and upon all invoices for such oleomargarine. If any shipment of such taxable oleomargarine is received by any person, firm or corporation from any wholesaler, or is sold or offered for sale by him or them, upon which the requirements of Sections 4 and 7 of this Act are not complied with, such person, firm, or corporation shall be deemed guilty of a misdemeanor, and punishable as hereinafter provided.

## Comptroller to Enforce Rules and Regulations

Sec. 9. The State Comptroller shall have the power and it shall be his duty from time to time, to adopt, publish and enforce rules and regulations not inconsistent herewith for the purpose of carrying out the provisions of this Act.

## Exemption on Export Sales

Sec. 10. Said excise tax shall not be imposed on oleomargarine when sold for exportation from the State of Texas to any other State, territory or nation; provided, however, the wholesaler or exporting agent shall make a statement each month to the

State Comptroller showing the amount of taxable oleomargarine exported.

**Persons Considered as Wholesalers**

Sec. 11. If any person shall receive such taxable oleomargarine in such form and under such circumstances as shall preclude the collection of this tax from the wholesaler by reason of the provisions of the Constitution and laws of the United States, and shall thereafter sell such oleomargarine in such manner and under such circumstances as may subject such sale to the taxing power of the State, such person shall be considered a wholesaler and shall make the same reports, pay the same taxes and be subject to all the provisions of this Act relating to wholesalers of taxable oleomargarine.

**Packages Marked "Oleomargarine"**

Sec. 12. On and after January 1, 1935, no person shall sell, expose or offer for sale or exchange, or have in his possession with the intent to sell or exchange, any oleomargarine unless each and every vessel, package, roll, carton or parcel of such substance has distinctly and durably printed, stamped or stenciled thereon, the name "oleomargarine" in plain Gothic letters of not less than eighteen (18) point type so displayed as to be directly visible at all times to the purchaser, and unless such person shall have printed on the container or inside wrapper in plain Gothic letters of not less than ten (10) point type the name of each ingredient contained in the package, roll, carton or parcel of oleomargarine.

**Penalties**

Sec. 13. Every person who shall sell, or expose for sale, or have in possession with intent to sell, oleomargarine taxable under this Act upon which the tax has not been paid; or shall fail to keep any record required to be kept by this Act; or who shall in any other respect violate any of the provisions of this Act, or any of the rules and regulations adopted by the State Comptroller, shall for every offense forfeit and pay the sum of One Hundred Dollars (\$100.00) which shall be recoverable with the costs, including the expense of analysis, by any person in the name of the State in any Court of competent jurisdiction within the State. All penalties and costs imposed and recovered upon the conviction for a violation of any provisions of this Act shall be paid to the State Comptroller, and by him immediately paid into the General Revenue Fund of the State.

Provided, that in case of an appeal from a conviction secured under this Act, the State Comptroller, or any other person suing in the name of the State by setting forth the facts, may ask the Court to command and restrain the person prosecuted from further violation of this Act until final determination is made of the pending case, and that in bringing such action for a restraining order, no bond or other security shall be required of such State Comptroller, his agent, or attorney, the Attorney General, or the County or District Attorney, but bond shall be required of all other persons the same as in other injunction cases.

**Additional Penalties**

Sec. 14. In addition to the above forfeiture, every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm or corporation, who violates any of the provisions of this Act or any of the rules and regulations adopted by the State Comptroller, shall also be guilty of a misdemeanor; and upon conviction thereof, shall be punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than three months, or both.

**Partial Invalidity**

Sec. 15. If any section, subdivision, sentence or clause of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the Act.

[Acts 1934, 43rd Leg., 3rd C.S., p. 8, ch. 6; Acts 1965, 59th Leg., p. 73, ch. 26, § 1.]

**Art. 7057d. Transferred to Article 7255b**

Provisions of this article, Acts 1939, 46th Leg., p. 654, § 1, relating to discounts on ad valorem taxes paid in advance, are set out as article 7255b.

**Art. 7057e. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7057f. Occupation Tax on Business of Gathering Gas**

**Definitions**

Sec. 1. The provisions of Texas Revised Civil Statutes (1925) Articles 10, 11, 12, 14, 22, and 23 and Texas Laws 1947, Chapter 359,<sup>1</sup> on the interpretation of Statutes shall apply specifically to this Section. In addition to these standard definitions, in this Section, unless the context otherwise requires:

(a) "Gas" means natural and casing-head gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate, condensate or other product.

(b) "Casing-head gas" means any gas or vapor indigenous to an oil stratum and produced from such stratum with oil.

(c) "Gathering gas" means the first taking or the first retaining of possession of gas produced in Texas for transmission whether through a pipe line, either common carrier or private, or otherwise after severance of such gas, and after the passage of such gas through any separator, drip, trap, meter or other method designed to separate the oil therefrom. In the case of gas containing gasoline or liquid hydrocarbons that are removed or extracted at a plant within the State by scrubbing, absorption, compression or any other process, the term "gathering gas" means the first taking or the first retaining of possession of such gas for other processing or transmission whether through a pipe line, either

common carrier or private, or otherwise after such gas has passed through the outlet of such plant.

(d) "Gatherer" means any person engaged in the gathering of gas.

(e) "Person" means and includes any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust, as well as trustees acting under declarations of trusts.

(f) "Cubic foot of gas" or "standard cubic foot of gas" shall have the definition ascribed thereto by Texas Laws, 1949, Chapter 519, Section 4, Texas Revised Civil Statutes (Vernon, 1948), Article 7047b, Section 2(12).

<sup>1</sup> Article 23a.

#### Imposition of Tax; Amount; Calculation

Sec. 2. In addition to all other licenses and taxes levied and assessed in the State of Texas, there is hereby levied upon every person engaged in gathering gas produced in this State, an occupation tax for the privilege of engaging in such business, at the rate of  $\frac{1}{20}$  of one cent per thousand (1,000) cubic feet of gas gathered.

In determining the quantity of the gas for the purposes of calculating such tax, there shall be excluded (a) gas produced and then lawfully injected into the earth of this State; (b) gas used for fuel in connection with lease or field operations; (c) gas lawfully vented or flared; and (d) gas used in the manufacturing of carbon black.

#### Payment; Penalty for Delay

Sec. 3. The tax levied hereby shall be paid by the gatherers on the 25th day of each month on all gas gathered in the State during the next preceding thirty (30) days prior to the first day of the month in which payment is required to be made. If such payment is not made within the time above prescribed, the amount due shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added and such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until paid.

#### Unlawful to Require Producer to Pay

Sec. 4. The tax imposed by this Act is a tax on the occupation of gathering gas and not on the production of gas; therefore, it shall be unlawful for any gas gatherer to require any producer to pay the tax imposed under this Act under any contract provision between the producer and the gas gatherer allowing the gatherer to deduct from sums owed the producer amounts paid by the gatherer by reason of the imposition of a tax on production.

#### Records and Reports; Rules and Regulations

Sec. 5. It shall be the duty of each gatherer of gas in this State to keep accurate records within this

State of all gas gathered and showing also what disposition is made of same, and to make reports to the Comptroller of Public Accounts of gas gathered upon forms prescribed by the Comptroller of Public Accounts. The Comptroller shall prescribe forms of reports to be made by such gatherers and to require that such reports be made on officially prescribed forms.

The Comptroller of Public Accounts shall have the power to prescribe such rules and regulations, and require such records and reports as may be needed to aid in the administration and enforcement of the Act.

#### Examinations and Investigations; Appropriation for Administration and Enforcement

Sec. 6. The Comptroller shall employ auditors and technical assistants for the purpose of verifying reports and investigating the affairs of gatherers to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Act, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records, of any person, subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Act is made, one fifth ( $\frac{1}{5}$ ) of one per cent (1%) of the occupation tax paid monthly as may be needed in such administration and such enforcement is hereby appropriated for such purpose.

#### Delinquency; Injunction

Sec. 7. In the event any gas gatherer in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such person from gathering gas until the delinquent tax is paid or said reports are filed, and the venue of any such suit for injunction is hereby fixed in the county where the offense occurs.

#### Violations; Lien; Ascertainment of Amount Due; Gas Audit Fund; Suits

Sec. 8. If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25) for each violation and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties, and interest on all property and equipment used by the gatherer of gas in his business of gathering gas, and if any gatherer of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other per-

sons to ascertain the correct amount due, and the gatherer of gas shall be liable, as an additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit; provided, that funds collected for audits and examinations shall be placed in a gas audit fund in the Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purpose, and all of said funds to be placed in said gas audit fund are hereby appropriated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amount due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

**Reports and Audits as Evidence; Sale or Transfer of Agreements**

Sec. 9. (a) If any person liable for the payment of the tax hereby levied, or required to remit the same to the Comptroller of Public Accounts, fails or refuses to pay any tax, penalty, or interest within the time and manner provided by the Act and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such gatherer or representative of said gatherer or a certified copy thereof certified to by the Comptroller showing the amount of gas gathered on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said gatherer when filed and sworn to by such representative as being made from the records of said gatherer, such report or audit shall be admissible in evidence in such proceedings and shall be prima-facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be submitted in evidence only against the party by or from whom it was made.

(b) In the event the Attorney General shall file suit of claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said gatherer, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid and that all payments and credits have been allowed, then unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima-facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

(c) When any contract or agreement of gathering gas changes hands, the old gas gatherer shall note on his last report that said contract, or agreement has been sold or transferred, showing the effective

date of said change and the name and address of the person who will gather gas under said contract, or agreement and be responsible for the filing of reports provided for in this Act, and the new gas gatherer shall note on his first report that said contract, or agreement has been acquired, showing the effective date of said change and the name and address of the person formerly gathering gas under said contract, or agreement.

**Disposition of Collections**

Sec. 10. All moneys derived from and collected by the State of Texas, under the provisions of this Act, less one-fifth ( $\frac{1}{5}$ ) of one per cent (1%) as provided for in Section 6 hereof, shall be deposited in the State Treasury, in the proportion as follows: one-fourth ( $\frac{1}{4}$ ) of the same shall go to and be placed to the credit of the Available Free School Fund; the remaining three-fourths ( $\frac{3}{4}$ ) shall go to and be placed to the credit of the General Revenue Fund.

**Invalidity as to Interstate Transmission; Effect**

Sec. 11. In the event the tax levied by this Section is declared unconstitutional or invalid by a court of competent jurisdiction as to gas gathered for interstate transmission, the tax shall not be levied as to gas gathered for intrastate consumption.

[Acts 1951, 52nd Leg., p. 695, ch. 402, § XXIII.]

**CHAPTER TWO. TAXES BASED UPON GROSS RECEIPTS**

**Article**

7058 to 7060. Repealed.

7060½. Additional Tax on Gas, Electric, and Water Works Companies.

7060a. Repealed.

7060b. Servicing or Testing Oil or Gas Wells.

7061-7063. Repealed.

7064. Insurance Companies other than Life, other than Fraternal Benefit Associations, and other than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums.

7064½. Additional Tax on Insurance Companies.

7064a. Tax on Domestic Life, Accident and Health Insurance Organizations.

7064a-1. Additional Tax on Life, Accident and Health Insurance Organizations.

7065-7065q. Repealed.

7065a-1 to 7065a-18. Repealed.

7065b-1 to 7065b-29. Repealed.

7066 to 7066b-1. Repealed.

7066c. Motor Bus Companies, Motor Carriers and Contract Carriers.

7067. Repealed.

7067a. Franchise Tax of Interurban and Electric Railway Companies.

7068-7070. Repealed.

7070a. Telephone Companies; Additional Tax.

7071, 7072. Repealed.

7073. Tax Paid when Business is Begun after Beginning of Quarter.

7074. Penalty for Failure to Report.

7075. Penalty for Failure to Pay Tax.

7076. Repealed.

7076a. Delinquent Franchise and other Taxes than Ad Valorem Taxes on Property.

7077. Permit not Granted until Tax Paid.

7078. Repealed.

7079. Additional Reports.

Article

- 7080. Permit.
- 7081. Issuance of Permit.
- 7082. Suspension of Permit.
- 7083. Penalties.
- 7083a. Allocation of Revenue Derived from Certain Occupations and Gross Receipts Taxes; Appropriations and Allocations for Certain Funds.
- 7083a.1. Deposit of Revenues Collected in Certain Funds when Amount Transferred from "Clearance Fund" Insufficient.
- 7083a.2. Allocations and Payments to Teacher Retirement System; Annual Estimates; Adjustments; Actuarial Report; Matching Contributions.
- 7083b. Repealed.

**Arts. 7058 to 7060. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7060½. Additional Tax on Gas, Electric, and Water Works Companies**

In addition to all other taxes, each individual, company, corporation, or association, owning, operating, managing, or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power, or water, shall make quarterly, on the first day of April, July, and October of 1950, and on the first day of January, April, and July of 1951, a report to the Comptroller under oath of the individual, or of the president, treasurer, or superintendent of such company, or corporation, or association, showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power, or water for the quarter next preceding. Said individual, company, corporation, or association, at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants, and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to ten per cent (10%) of forty-four hundredths (.44) of one per cent (1%) of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to ten per cent (10%) of eighty-one hundredths (.81) of one per cent (1%) of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax

for the quarter beginning on said date an amount equal to ten per cent (10%) of one and five thousand one hundred twenty-five ten-thousandths per cent (1.5125%) of said gross receipts, as shown by said report. Nothing herein shall apply to any such gas, electric light, power, or water works, or water and light plant, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district.

Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation, or association, and distributed by another, the tax shall be paid by the distributor alone.

This tax is levied for the period from the effective date of this Section through August 31, 1951; and the tax to be paid on the report as of July 1, 1951, as an occupation tax for July and August, 1951, shall be two-thirds (⅔) of the amount it would be for a full quarter.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. V, § 1.]

**Art. 7060a. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7060b. Servicing or Testing Oil or Gas Wells**

Sec. 1. (a) The term "person" shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, associations, and corporations.

(b) In addition to all other taxes, every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation, with the use of any devices, tools, instruments or equipment, electrical, mechanical, or otherwise, or by means of any chemical, electrical, or mechanical process when such service is performed in connection with the cementing of the casing seat of any oil or gas well or the shooting or acidizing the formations of such wells or the surveying or testing of the sands or other formations of the earth in any such oil or gas wells, shall report on the twentieth of each month and pay to the Comptroller, at his office in Austin, Texas, an occupation tax equal to ten per cent (10%) of two and two-tenths per cent (2.2%) of the gross amount received from said service furnished or duty performed, during the calendar month next preceding. The said report shall be executed under oath on a form prescribed and furnished by the Comptroller.

Sec. 2. A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforce-

ment of this Article and the collection of the tax levied herein.

Sec. 3. If any person shall violate any provision of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a penalty equal to one per cent (1%) per month from due date. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

Sec. 4. If any section, subsection, sentence, clause, or phrase of this Article, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Sec. 5. The tax levied by this Article XV is for the period from the effective date of Sections 1 to 5, both inclusive, through and including August 31, 1951.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XV, § 1.]

**Art. 7061. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Arts. 7062, 7063. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7064. Insurance Companies other than Life, other than Fraternal Benefit Associations, and other than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums**

Every insurance corporation, Lloyd's or reciprocals, and any other organization or concern transacting the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, workmen's compensation, employers' liability, or any other kind or character of insurance business, other than the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, written by a life insurance company, life and accident insurance company or health and accident insurance company, or for mutual benefit or protection in this State and other than fraternal benefit associations or societies in this State, and other than non-profit group hospital service plans, at the time of filing its annual statement, shall report to the Board of Insurance Commissioners the gross amount

of premiums received upon property located in this State or on risks located in this State during the preceding year, and each of such insurance carriers shall pay an annual tax upon such gross premium receipts of 3.85%, provided that any such insurance carriers doing two (2) or more kinds of insurance businesses herein referred to shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law shall be the total gross amount of premiums received on each and every kind of insurance or risk written, except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders, but there shall be no deduction for premiums paid for reinsurance. The gross premium receipts, as above defined, shall be reported and shown as the premium receipts in the report to the Board of Insurance Commissioners by the insurance carriers, upon the sworn statements of two (2) principal officers of such carriers. Upon receipt by the Board of Insurance Commissioners of the sworn statements, showing the gross premium receipts by such insurance carriers, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each insurance carrier which tax shall be paid to the State Treasurer on or before the first day of March following, and the Treasurer shall issue his receipt to such carrier, which shall be evidence of the payment of such taxes. No such insurance carrier shall receive a permit to do business in this State until all such taxes are paid.

Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year, the amount that it had invested on the 31st of December, preceding, in Texas securities as defined herein and the amount that it had invested on said date in similar securities in the State in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments in such other State, it shall include as a part thereof that percentage of its investments in bonds of the United States of America purchased between December 8, 1941, and the termination of the war in which the United States is now engaged that its reserves for unearned premiums and loss reserves, as required in such other state, are of its total reserves. If the report of such insurance organization as of December 31st preceding, shows that such organization had invested in Texas securities, as herein defined, an amount which is not less than seventy-five per cent (75%) nor more than eighty per cent (80%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 3.025% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty per cent (80%) and not more than eighty-five per cent (85%)

of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.75% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-five per cent (85%) and not more than eighty-eight per cent (88%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.2% of its gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-eight per cent (88%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 1.65% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 1.1% of such gross premium receipts. Provided, further, that the amount of all examination and valuation fees paid in each taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year.

For the purposes of this Act, Texas securities are defined as real estate in this State; bonds of the State of Texas; bonds or interest bearing warrants of any county, city, town, school district or any municipality or subdivision thereof which is now or may hereafter be constituted or organized and authorized to issue bonds or warrants under the Constitution and laws of this State; notes or bonds secured by mortgage or trust deed on property in this State insured by the Federal Housing Administrator; the cash deposits in regularly established national or state banks or trust companies in this State on the basis of average monthly balances throughout the calendar year; that percentage of such insurance company's investments in the bonds of the United States of America, that its Texas reserves for the unearned premiums and loss reserves as may be required by the Board of Insurance Commissioners, are of its total reserves; but this provision shall apply only to United States Government bonds purchased between December 8, 1941, and the termination of the war in which the United States is now engaged; in any other property in this State in which by law such insurance carriers may invest their funds.

No occupation tax shall be levied on insurance companies herein subjected to the gross premium receipt tax by any county, city or town. All mutual fraternal benevolent associations now or hereafter

doing business in this State under the lodge system and representative form of government, whether organized under the laws of this State or a foreign state or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes collectible under the laws of this State against any such insurance carriers except maintenance taxes specially levied under the laws of this State and assessed by the Board of Insurance Commissioners to support the various activities of the divisions of the Board of Insurance Commissioners, and except if any such carrier is writing personal accident or health and accident insurance other than workman's compensation, it shall be taxed as otherwise provided by law on account of such business; and except unemployment compensation taxes levied under Senate Bill No. 5, passed by Third Called Session of the Forty-fourth Legislature and amendments thereto.<sup>1</sup> No other tax shall be levied or collected from any insurance carrier by the state, county, city or any town, but this law shall not be construed to prohibit the levy and collection of state, county and municipal taxes upon the real and personal property of such carrier. Purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from the provisions of this law. This Act shall be cumulative of all other laws and shall repeal Article 4758, Revised Civil Statutes of 1925, as amended, and all other laws only in so far as they levy any tax on any of the organizations affected by this Act or otherwise conflict with this Act, except as provided above. [Acts 1925, S.B. 84; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 5; Acts 1937, 45th Leg., p. 525, ch. 258, § 1; Acts 1939, 46th Leg., p. 638, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, art. XVIII, § 1; Acts 1945, 49th Leg., p. 574, ch. 341, § 1; Acts 1951, 52nd Leg., p. 695, ch. 402, § XV (§ 1).]

<sup>1</sup> Article 5221b-1 et seq.

#### Art. 7064½. Additional Tax on Insurance Companies

In addition to all other taxes, there is levied hereby an additional tax for the years 1950 and 1951, on every insurance corporation, Lloyd's or reciprocals, and on any other organization or concern upon which a tax is levied by Article 7064, Revised Civil Statutes of Texas, 1925, as amended.

The tax shall be paid at the same time, in the same manner, and subject to all the same terms, conditions, obligations and penalties as is provided for the payment and collection of the tax levied in the aforesaid Article 7064.

The tax hereby levied for the year 1950, shall be ten per cent (10%) of three-fourths (¾) of the amount of tax levied and due for the calendar year 1950 under the aforesaid Article 7064. The tax hereby levied for 1951 shall be two-thirds (⅔) of ten per cent (10%) of the amount of tax levied and due for the calendar year 1951 under the aforesaid Article 7064.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XVII, § 1.]

### Art. 7064a. Tax on Domestic Life, Accident and Health Insurance Organizations

Every group of individuals, society, association, group hospital service plan, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Act) organized under the laws of this State and transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit or otherwise, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31st, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first-year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one (1) occupation, shall pay an annual tax of 1.1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year the amount that it had invested on the 31st day of December, preceding, in Texas securities as defined by Article 3.34, Texas Insurance Code, as amended; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred and Fifty Thousand Dollars (\$450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of  $\frac{55}{80}$  of 1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first-year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first-year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy, and provided further that the amount of all examination and valuation fees paid in such taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. Such gross premium receipts so reported shall not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal

government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of the State Welfare Act or the Federal Social Security Act. If any such insurance organization does more than one (1) kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Upon receipt by it of the sworn statement above provided, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the 15th day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31st, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, organized under the laws of this State, except, and only except unemployment compensation taxes levied under Senate Bill No. 5, passed at the Third Called Session of the Forty-fourth Legislature and amendments thereto;<sup>1</sup> and the fees provided for under Article 4.07, Texas Insurance Code, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workman's compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

[Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 4, § 5b; Acts 1937, 45th Leg., p. 525, ch. 258, § 1b; Acts 1939, 46th Leg., p. 640, § 1; Acts 1949, 51st Leg., p. 1365, ch. 620, § 1; Acts 1951, 52nd Leg., p. 695, ch. 402, § XVIII (§ 1); Acts 1971, 62nd Leg., p. 1535, ch. 406, § 1, eff. May 26, 1971.]

<sup>1</sup> Article 5221b-1 et seq.  
Section 2 of the 1971 amendatory act provided: "Repealer Clause. All laws and parts of laws in conflict with this Act are hereby repealed, insofar as they are inconsistent therewith."

### Art. 7064a-1. Additional Tax on Life, Accident and Health Insurance Organizations

In addition to all other taxes, there is levied hereby an additional tax for the years 1950 and 1951, on every group of individuals, society, association, or corporation upon which a tax is levied by Chapter 620, Acts, Regular Session, Fifty-first Legislature.<sup>1</sup>

The tax shall be paid at the same time, in the same manner, and subject to all the same terms, conditions, obligations and penalties as is provided for the payment and collection of the tax levied in

the aforesaid Chapter 620, Acts, Regular Session, Fifty-first Legislature.

The tax hereby levied for the year 1950, shall be ten per cent (10%) of three-fourths ( $\frac{3}{4}$ ) of the amount of tax levied and due for the calendar year 1950 under the aforesaid Chapter 620, Acts, Regular Session, Fifty-first Legislature. The tax hereby levied for 1951 shall be two-thirds ( $\frac{2}{3}$ ) of ten per cent (10%) of the amount of tax levied and due for the calendar year 1951 under the aforesaid Chapter 620, Acts, Regular Session, Fifty-first Legislature.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XVII, § 2.]

<sup>1</sup> Articles 7064a, 4769a note.

**Art. 7065. Repealed by Acts 1931, 42nd Leg., p. 163, ch. 98, § 1; Acts 1933, 43rd Leg., p. 75, ch. 44, § 17; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Arts. 7065a to 7065q. Repealed by Acts 1933, 43rd Leg., p. 75, ch. 44, § 17**

**Arts. 7065a-1 to 7065a-18. Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 28**

**Arts. 7065b-1 to 7065b-29. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7066. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 233, ch. 74, § 4; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7066a. Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. III, § 1**

**Art. 7066b. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7066b-1. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7066c. Motor Bus Companies, Motor Carriers and Contract Carriers**

Sec. 1. (a) In addition to all other taxes, each individual, partnership, company, association, or corporation doing business as a "motor bus company" as defined in Chapter 270, Acts, Regular Session of the Fortieth Legislature, as amended by the Acts of 1929, First Called Session of the Forty-first Legislature, Chapter 78,<sup>1</sup> or as "motor carrier" or "contract carrier" as defined in Chapter 277, Acts, Regular Session of the Forty-second Legislature,<sup>2</sup> over and by use of the public highways of this State, shall make quarterly on the first day of April, July and October of 1950, and on the first day of January, April and July of 1951, a report to the Comptroller, under oath, of the individual, partnership, company, association, or corporation by its president, treasurer, or secretary, showing the gross amount received from intrastate business done within this State in the payment of charges for transporting persons for compensation and any freight or commodity for hire, or from other sources of revenue received from intrastate business within this State during the quarter next preceding. Said individual, partnership, company, association, or corporation at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to ten per cent (10%) of two and two-tenths per cent (2.2%) of said gross receipts,

as shown by said report. Provided, however, carriers of persons or property who are required to pay an intangible assets tax under the laws of this State, are hereby exempted from the provisions of this Article of this Act.

(b) It is further provided that individuals, partnerships, companies, associations, or corporations engaged exclusively in the business of transporting logs or timber in its natural state, are hereby exempted from the provisions of this Article of this Act levying an occupational tax upon the gross receipts; provided that if this Act or any section, subsection, sentence, clause, or phrase thereof is held unconstitutional or invalid by reason of the inclusion of this subsection, the Legislature hereby declares that it would have passed this Act and any such section, subsection, sentence, clause, or phrase thereof without this subsection.

(c) The tax herein levied is in addition to any other fees and ad valorem taxes otherwise assessed.

(d) This Article XIII shall cover, the period beginning with the effective date of this Section and terminating August 31, 1951; and the tax to be paid on the report required to be filed as of July 1, 1951, shall be for only two-thirds ( $\frac{2}{3}$ ) of a quarter.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XIII, § 1.]

<sup>1</sup> Article 911a.

<sup>2</sup> Article 911b.

**Art. 7067. Repealed by Acts 1927, 40th Leg., p. 431, ch. 286, § 1**

**Art. 7067a. Franchise Tax of Interurban and Electric Railway Companies**

In lieu of the tax imposed upon such individual, company, corporation, or association as provided in Article 7067 of the Revised Civil Statutes of 1925, the said individual, company, corporation, or association shall be required to pay the franchise tax now imposed in Chapter 3, of Title 122, of the Revised Civil Statutes of 1925, or which may hereafter be imposed by law.

[Acts 1927, 40th Leg., p. 431, ch. 286, § 2.]

**Art. 7068. Repealed by Acts 1931, 42nd Leg., p. 447, ch. 267, § 5; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7069. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7070. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7070a. Telephone Companies; Additional Tax**

In addition to all other taxes, each individual, company, corporation, or association owning, operating, managing, or controlling any telephone line or lines, or any telephones within this State and charging for the use of same, shall make quarterly, on the first day of April, July, and October of 1950, and on the first day of January, April, and July of 1951, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, show-

ing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to ten per cent (10%) of one and one-half per cent (1½%) of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to ten per cent (10%) of one and three-fourths per cent (1¾%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand, five hundred (2,500) inhabitants, and not more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to ten per cent (10%) of 2.275 per cent of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census. Nothing herein shall apply to any telephone line or lines owned and operated by a cooperative, non-profit, membership corporation.

This tax is levied for the period from the effective date of this Section through August 31, 1951; and the tax to be paid on the report as of July 1, 1951, as an occupation tax for July and August 1951, shall be two-thirds (⅔) of the amount it would be for a full quarter.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. IV, § 1.]

**Art. 7071. Repealed by Acts 1933, 43rd Leg., p. 409, ch. 162, § 10; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7072. Repealed by Acts 1953, 53rd Leg., p. 1010, ch. 414, § 1**

**Art. 7073. Tax Paid when Business is Begun after Beginning of Quarter**

If any individual, company, corporation, firm, or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter

provided; and reports and payments of such tax shall be made subject to all other provisions of this chapter.

[Acts 1925, S.B. 84.]

**Art. 7074. Penalty for Failure to Report**

Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars.

[Acts 1925, S.B. 84.]

**Art. 7075. Penalty for Failure to Pay Tax**

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax.

[Acts 1925, S.B. 84.]

**Art. 7076. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7076a. Delinquent Franchise and other Taxes than Ad Valorem Taxes on Property**

It is further specifically provided that all of the provisions of this Act shall apply and be applicable to all delinquent State taxes due and owing to the State of Texas, of every kind and character whatsoever, including all franchise, occupation, gross receipts, gross production, gross premiums tax on insurance companies, inheritance, gasoline, excise and all other State taxes which become delinquent other than State ad valorem taxes on property. It is hereby declared to be one of the purposes hereof to impose upon the State Tax Board the additional duty of collecting and aiding in the collection of all delinquent taxes enumerated and referred to herein, and all laws now applicable to the collection of such delinquent taxes, and all powers and authority now possessed by existing officers and agencies of the State Government are hereby, in addition, conferred upon said State Tax Board, as far as the same may be applicable, but this provision shall not in any manner lessen, transfer, interfere with or impair the rights or duties of existing agencies of government to collect such delinquent taxes; provided further, that said State Tax Commissioner shall, after the passage hereof, be the chief administrative officer of this Act, and said State Tax Commissioner shall have full and exclusive power and authority to employ such clerical personnel as may be necessary for the proper and efficient prosecution of delinquent tax suits, and all actions which may arise hereunder, which shall be in addition to such assistance as may be required by the State Tax Board or the State Tax Commissioner from the Attorney General of Texas, and the State Board of Control shall provide said State Tax Board with proper and sufficient office space and quarters.

[Acts 1933, 43rd Leg., p. 581, ch. 192, § 2.]

**Art. 7077. Permit not Granted until Tax Paid**

No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State; until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax.

[Acts 1925, S.B. 84.]

**Art. 7078. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7****Art. 7079. Additional Reports**

If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this chapter.

[Acts 1925, S.B. 84.]

**Art. 7080. Permit**

Every person, company, firm, partnership, corporation, or unincorporated company or association, engaged in any business within this State, upon which the laws of this State require the payment of a tax on gross receipts, shall be required to have a permit to transact such business, to be issued by the State Comptroller, which permit shall be and remain posted, subject to the view of the public at the principal office of such person to whom the same is issued. The permit shall be issued in such form as the Attorney General may prescribe, shall show the name of the person or concern to whom issued, the business to be transacted, and that the holder thereof has complied with this law.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 367, ch. 232, § 1.]

**Art. 7081. Issuance of Permit**

Permits to transact business shall be issued by the Comptroller upon applications made upon form prescribed by the Comptroller, which application shall show, to the satisfaction of the Comptroller, the facts required to be shown in the permit; and shall show that the applicant has paid the gross receipts taxes prescribed by law, or that if the applicant is the vendee of a going business that his vendor has paid all his gross receipts taxes due, or to become due; such taxes are to be shown to be paid for the current quarter, or such other period of time as said taxes may be paid. The Comptroller after determin-

ing that such taxes have been paid, shall then issue a permit to transact business, authorizing the party to whom issued to transact business until the 31st day of December of the current year, after which date new permits for each year must be obtained, as in the first instance. The payment of One Dollar (\$1) will be required with each gross receipts tax application to defray the cost of issuing said permit.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 367, ch. 232, § 1.]

**Art. 7082. Suspension of Permit**

Within thirty (30) days after gross receipts taxes may become due by any one transacting or authorized to transact business hereunder, if such tax remains unpaid the Comptroller shall notify the delinquent taxpayer that his tax is unpaid and that unless the tax is paid to the Comptroller within ten (10) days from the date of such notice the permit to transact business of the delinquent will be suspended by the State Comptroller. The notice herein provided for shall be given by the State Comptroller, mailing to the delinquent at his last known address a printed or written notice, and the mailing of such notice shall be a sufficient compliance of this law. If the tax, with accrued penalties, is not paid within fifteen (15) days after the mailing of the notice, the State Comptroller shall note on his records that the permit to transact business of the delinquent has been suspended, giving the date upon which such action was taken by the State Comptroller. The State Comptroller shall then immediately certify such suspension to the Attorney General. After the permit to transact business has been suspended, it shall be unlawful for the delinquent to continue to transact business, and it shall be the duty of the State Comptroller to cause to be published in some daily or weekly paper, published in the county of the delinquent's place of business, or if there is no newspaper published in such county, then in some daily newspaper of State-wide circulation, notice that the delinquent's permit to transact business has been suspended.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 367, ch. 232, § 1.]

**Art. 7083. Penalties**

Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid, without having first obtained a permit to do so, or transacting such business after its permit so to do has been suspended, as provided by this law, shall be liable to a penalty of not less than \$50.00 nor more than \$500.00 daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law.

[Acts 1925, S.B. 84.]

**Art. 7083a. Allocation of Revenue Derived from Certain Occupations and Gross Receipts Taxes; Appropriations and Allocations for Certain Funds**

Sec. 1. All revenue, other than that part allocated for enforcement purposes, derived and collected from the taxes levied by Chapter 241, Acts of the Regular Session, Forty-fourth Legislature,<sup>1</sup> and any amendments thereof or thereto, shall be hereafter and is hereby allocated as follows: one fourth ( $\frac{1}{4}$ ) to the Available School Fund of the State of Texas and three fourths ( $\frac{3}{4}$ ) into the Clearance Fund provided by this Act. All laws and parts of laws in conflict with this section are repealed to the extent of such conflict only.

Sec. 2. All revenue derived from and collected under Article VIII of this Act<sup>2</sup> shall be paid into the General Revenue Fund of the State of Texas. All revenue derived from and collected under Article XIII of this Act<sup>3</sup> shall be and is allocated as now provided by law. All revenue derived from and collected under Article XVII of this Act<sup>4</sup> shall be allocated as provided in Section 25 of said Article.<sup>5</sup>

From all revenue derived and collected under the provisions of Articles I, II, III, IV, V, VI, VII,<sup>6</sup> (subdivision a), IX, X, XI, XII, XIV, XV, XVI, and XVIII of this Act after deduction of that portion provided for enforcement purposes, there shall be allocated to the Available School Fund one-fourth ( $\frac{1}{4}$ ) of the total sum collected thereunder and same shall be deposited and credited to the Available School Fund in the State Treasury.

After deduction of the allocation provided in the next preceding paragraph to be apportioned to the Available School Fund, the balance of the funds collected under Articles I, II, III, IV, V, VI, VII (subdivision a), IX, X, XI, XII, XIV, XV, XVI, and XVII of this Act shall be deposited in a Clearance Fund in the Treasury, and from such fund the revenues so derived and collected shall be transferred and allocated by the State Treasurer as follows:

(1) There shall be allocated, transferred and credited to the Special Fund in the Treasury known as the "Blind Assistance Fund" for the purpose of providing assistance to the blind in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, 46th Legislature, 1939, and any amendments thereto,<sup>7</sup> an amount out of state funds for each fiscal year which will provide funds in amounts equivalent to the funds appropriated by the Legislature for such purposes, said allocation to be provided for on a basis of equal monthly payments payable on the first day of each calendar month.

(2) There shall be allocated, transferred and credited to the Special Fund in the Treasury known as the "Children's Assistance Fund" for the purpose of providing assistance on behalf of dependent children in the manner as authorized by Senate Bill No. 36, Acts of the Regular

Session, 46th Legislature, 1939, and any amendments thereto, an amount out of state funds for each fiscal year which will provide funds in amounts equivalent to the funds appropriated by the Legislature for such purposes, said amount to be provided on the basis of equal monthly payments payable on the first day of each calendar month.

(3) Beginning with the fiscal year starting on September 1, 1959, and annually thereafter, there is hereby allocated and appropriated to the Teacher Retirement System of Texas in accordance with the provisions of Senate Bill No. 47, Acts of the Regular Session, Forty-fifth Legislature, 1937, and any amendments thereto,<sup>8</sup> a sum each year equivalent to the contributions of the members of the Teacher Retirement System during said year. Said annual allocated and appropriated amounts shall be paid to the Teacher Retirement System in equal installments during the months of November, December, March, April, June and July of each fiscal year beginning with the year starting September 1, 1959, based upon the annual estimate by the State Board of Trustees of the Teacher Retirement System of the contributions to be received from the members of said System during each such fiscal year; provided further, that in the event said estimate of the contributions of the members of the System shall vary from the actual amount of the teachers' contributions during the year, then such adjustments as may be required shall be made on the first day of the following fiscal year with any moneys in or due the General Revenue Fund.

(3A) [Expired; see note following this article]

(4) After the above allocations and payments have been made from such "Clearance Fund" there shall be allocated, transferred and credited to the Special Fund in the Treasury known as the "Old Age Assistance Fund" for the purpose of providing assistance to the needy aged in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, 46th Legislature, 1939, and any amendments thereto, an amount out of state funds, when taken together with any other funds received from any other sources by reason of other state laws still in effect, for each fiscal year which will provide funds in amounts equivalent to the funds appropriated by the Legislature for such purposes, said allocation to be provided in monthly installments, one installment being payable on the first day of each calendar month.

If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Blind Assistance Fund," the "Children's Assistance Fund," and the "Old Age Assistance Fund" is not sufficient to provide the allocation from state funds as herein provided for that month, then in that event, there shall be deposited to the credit of

the "Blind Assistance Fund," the "Children's Assistance Fund," or the "Old Age Assistance Fund" from the first revenues collected after the first day of the month, which would otherwise go into the General Revenue Fund, such sum, as with the balance on hand in the fund plus the payment from the "Clearance Fund" will make available in the various funds the total amount of state funds for that month as is herein provided.

The allocations shall be and are in lieu of all other state allocations for aid to the blind, aid to dependent children, and old age assistance, and such allocations and appropriations shall not include any funds received from the Federal Government.

None of the money herein allocated for old age assistance payments, aid to the blind payments, or aid on behalf of needy children shall be used for the purpose of paying assistance to any person who disposes of property, either personal or real, for the purpose of qualifying or increasing need for assistance, provided that the property, if still available, would affect either eligibility or the amount of assistance payment.

(4-a) After the above allocations and payments have been made from such Clearance Fund, except that the allocations in Section 4-b of this Act, as provided for in Senate Bill No. 287, Acts of the 51st Legislature, shall be made before those provided for in this section, beginning with the fiscal year, September 1, 1949, and annually thereafter, there is hereby appropriated, allocated, transferred and credited to a special fund to be known as the Foundation School Fund, such an amount as is determined by the Foundation School Fund Budget Committee, which is hereby created. The membership of said Committee shall be composed of the State Commissioner of Education, State Auditor and State Comptroller of Public Accounts.

On or before the first day of November, next preceding each Regular Session of the Legislature, said Committee shall determine and certify to the State Comptroller of Public Accounts the calculated amount to be placed in the Foundation School Fund for the ensuing biennium for the purpose of financing a foundation school program as defined in the Foundation School Program Act, except that for the biennium beginning September 1, 1949, said Committee shall make such certification to the State Comptroller within thirty (30) days after the effective date of this Act. All monies allocated and appropriated from the Clearance Fund to the Foundation School Fund shall be paid into said Fund in installments, such installments to be monthly during the first nine (9) months of each fiscal year, so that the total amount or approximately the total amount shall be paid into said Fund by May 1st of each fiscal year; provided that in addition to the funds transferred from the

Clearance Fund to the Foundation School Fund, there shall also be deposited to the credit of the Foundation School Fund all money received from the Federal Government as reimbursement for expenditures already incurred, or any other agency, which is to be used in supplementing the salaries of vocational and special service public school personnel.

Said Foundation School Fund Budget Committee is authorized to modify from time to time during the biennium, the estimate of the funds required for the Foundation School Fund, and in the light of any revised estimate or estimates made by said Committee during the biennium, the State Comptroller shall increase, diminish or suspend the further payment or payments from the Clearance Fund to the Foundation School Fund, provided that, by the close of each fiscal year there shall have been paid from the Clearance Fund to the Foundation School Fund such an amount as may be needed to pay all approved grants in full. Warrants for all money expended from the Foundation School Fund shall be approved by the State Commissioner of Education and transmitted by him to the treasurers of depositories of school districts to which grants are made in the same manner as warrants for state apportionment are now transmitted. Nothing in this Act shall be construed to affect allocation of funds for Vocational Education, as provided by statutes now in effect, from the Federal Government to the State. Provided that no provision of this Act shall be interpreted inimically to the status that was heretofore enjoyed by the private or parochial schools operating in the State of Texas that they, the graduates and staff, shall receive credit as in the past upon their capacities to meet the requirements of the high school.

(4-b) After the above allocations and payments have been made from such Clearance Fund, beginning with the fiscal year September 1, 1959, and annually thereafter, there is hereby appropriated, allocated, transferred and credited, to a fund to be known as the Farm-to-Market Road Fund of the State Highway Department of the State of Texas the sum of Fifteen Million Dollars (\$15,000,000.00) per year for the construction of Farm-to-Market Roads by the State Highway Department within the State of Texas. The transfer, allocation and payment herein provided shall be made in equal installments during the months of April, May, June, July, and August of each fiscal year beginning with the fiscal year starting September 1, 1959, or as funds therefor become available.

The State Highway Department shall use the funds herein made available in conjunction with other funds available for such purposes so that not less than Twenty-Three Million Dollars (\$23,000,000.00) per year shall be used for the construction of additional miles of newly desig-

nated Farm-to-Market Roads, meaning roads in rural areas including feeder roads, secondary roads, school bus routes, rural mail routes, milk routes, etc., and not a part of the designated State Highway System or the designated Primary Federal Aid Highway System.

These funds shall be expended on a system of road selected by the State Highway Department after consultation with the County Commissioners Courts of the counties of Texas relative to the most needed unimproved rural roads in the counties involved. The selections shall be made in a manner to insure equitable and judicious distribution of funds and work among the several counties of the state.

The general characteristics of the roads to be selected are as follows:

a. The roads shall not be potential additions to the Federal Aid Primary Highway System;

b. The roads shall serve rural areas primarily and shall connect farms, ranches, rural homes and sources of natural resources such as oil, mines, timber, etc., and/or water loading points, schools, churches and points of public congregation, including community developments and villages;

c. The roads shall be capable of assisting in the creation of economic values in the areas served;

d. The roads shall preferably serve as public school bus routes, or rural free delivery postal routes, or both;

e. The roads shall be capable of early integration with the previously improved Texas Road System and at least one end should connect with a road already or soon to be improved on the State System of Roads.

The above allocation shall be made irrespective of any other subsection of this Section of this Article and Subsection (5) of Section 2 of this Article shall not be applicable to the Farm-to-Market Road Fund.

(4-c) The allocations provided for in Section 2 of Article 7083a, Vernon's Texas Civil Statutes, (Annotated), shall be made in the following manner:

A. Of the amount in the Clearance Fund the following allocations shall be made on the first of each month, after the amounts for enforcement and the one-fourth ( $\frac{1}{4}$ ) to the Available School Fund are taken out:

First. Section 2. (1) Blind Assistance Fund;

Second. Section 2. (2) Children Assistance Fund;

Third. Section 2. (4) Old Age Assistance Fund;

Fourth. Section 2. (6) Disabled Assistance Fund.

Provided, however, that in the months of April, May, June, July, and August of each fiscal year beginning with the fiscal year starting September 1, 1959, the transfer, allocation, and payment of Three Million Dollars (\$3,000,000) to the Farm-to-Market Road Fund of the State Highway Department shall be made on or before the fifth working day of such months and shall constitute a prior claim on the amount in the Clearance Fund described in this paragraph A. If for any of such months the amount remaining in the Clearance Fund is insufficient to provide for the full allocation due to the Farm-to-Market Road Fund of the State Highway Department, then and in that event, the balance of the amount needed for such full allocation or payment to such Fund shall be transferred and paid from any moneys in or otherwise due the General Revenue Fund.

It is further provided that during the months of November, December, March, April, June and July of each fiscal year beginning with the fiscal year starting September 1, 1959, one-sixth ( $\frac{1}{6}$ ) of the annual allocation and appropriation to the Teacher Retirement System shall be made during each of such months, and during such months such allocations or payments shall represent the sixth priority claim on the amount in the Clearance Fund described in this paragraph A. If for any of such months the amount remaining in the Clearance Fund is insufficient to provide for the full allocation due to the Teacher Retirement System, then and in that event, the balance of the amount needed for such full allocation or payment to such System shall be transferred and paid from any moneys in or otherwise due the General Revenue Fund.

It is also provided that such adjustments as may be required by any variance between estimated and actual contributions by the members of such System, shall be made on the first day of the following fiscal year in the State's allocations or payments with any moneys in or otherwise due the General Revenue Fund.

B. The cash balance in the Clearance Fund remaining after the amounts for enforcements and the one-fourth ( $\frac{1}{4}$ ) to the Available School Fund are taken out, and after the allocations described in paragraph A above have been made to the funds and for the purposes therein specified, shall be

allocated on the fifth working day as follows:

First. Section 2. (4-a) Foundation School Fund;

Second. Balance to General Revenue Fund.

C. Out of any and all receipts accruing to the Omnibus Tax Clearance Fund in August of each fiscal year, between the fifth working day in the month and the 31st of the month, after the amounts for enforcement and the one-fourth ( $\frac{1}{4}$ ) due the Available School Fund are taken out, the Comptroller is authorized and directed to calculate the next month's allocations due and payable under this Act to the Blind Assistance Fund, the Children's Assistance Fund, the Old Age Assistance Fund, and the Disabled Assistance Fund, in order to determine the residue of such receipts which could be credited to the General Revenue Fund; and the amount of such residue shall be credited to the General Revenue Fund as of August 31st of each such fiscal year.

D. All receipts due the Available School Fund deposited in the Omnibus Tax Clearance Fund in August of each fiscal year between the fifth working day in the month and the 31st day of the month shall be credited to the Available School Fund on August 31st of each fiscal year.

(5) All other revenue or money of any kind or character remaining in such Clearance Fund shall be paid into the General Revenue Fund of the State of Texas, and any money or revenue in excess of current biennial appropriations remaining in the special funds to which allocations are made from the Clearance Fund after the fifth working day of each month shall be transferred to the General Revenue Fund.

(6) There shall be allocated, transferred, and credited to the Special Fund in the Treasury known as the "Disabled Assistance Fund" for the purpose of providing assistance to the permanently and totally disabled in the manner as authorized by law or as hereafter may be authorized by law, an amount out of State funds for each fiscal year which will provide funds in amounts equivalent to the funds appropriated by the Legislature for such purposes, said amount to be provided for on the basis of equal monthly payments payable on the first day of each calendar month.

If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Disabled Assistance Fund" is not sufficient to provide the allocation from State funds as herein provided for that month, then in that event, there shall be deposited to the credit of the "Disabled Assistance Fund" from the first revenues collected after

the first day of the month, which would otherwise go into the General Revenue Fund, after deposit of such revenues as provided in Subsection (4) of this Section, such sum, as with the balance on hand in the Fund plus the payment from the "Clearance Fund," will make available in the "Disabled Assistance Fund" the total amount of State funds for that month as is herein provided.

The allocation shall be and is in lieu of all other State allocations for permanently and totally disabled assistance and such allocation and appropriation shall not include any funds received from the Federal Government.

(7) There shall be allocated, transferred, and credited to the special fund in the Treasury known as the "Medical Assistance Fund" for the purpose of providing Medical Assistance on behalf of recipients of public assistance and other groups of needy individuals in the manner as authorized by law or as hereafter may be authorized by law, an amount out of state funds for each fiscal year which will provide funds in amounts equivalent to the funds appropriated by the Legislature for such purposes; and such allocations to the "Medical Assistance Fund" shall represent and constitute the fifth priority claim on the amount in the "Clearance Fund," after the Constitutional allocation is made to the Available School Fund, in accordance with the priorities as established in the law as it now exists or as it may hereafter be amended.

(8) There shall be created in the State Treasury a Special Fund known as the "Economic Opportunity Fund—Welfare," and all funds received from the Federal Government and/or from any other source for the purpose of paying the cost and the administrative expenses incident to the projects or programs coming within the scope of this Act shall be deposited in said Special Fund in the Treasury subject to withdrawals upon authorization by the Commissioner of Public Welfare.

(9) There shall be allocated, transferred, and credited to a special fund in the State Treasury, to be known as the Temporary Welfare Administration Fund, the sum of \$625,708. The allocation provided herein shall be made in one payment in the month of April, 1971, and shall be the first priority allocation after the allocation to the Farm-to-Market Road Fund for that month only.

[Acts 1941, 47th Leg., p. 269, ch. 184, Art. XX, § 2, subsecs. 7 to 9; Acts 1941, 47th Leg., p. 774, ch. 481, § 2; Acts 1943, 48th Leg., p. 637, ch. 363, § 1; Acts 1947, 50th Leg., p. 21, ch. 14, §§ 1 to 3; Acts 1947, 50th Leg., p. 173, ch. 110, § 1; Acts 1949, 51st Leg., p. 85, ch. 51, § 1; Acts 1949, 51st Leg., p. 647, ch. 335, § 1; Acts 1955, 54th Leg., p. 1036, ch. 392, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, Art. V, § 1; Acts 1957, 55th Leg., p. 672, ch. 284, § 4; Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, Art. V, § 2; Acts 1961, 57th Leg., p. 391, ch. 197, § 1; Acts 1961, 57th Leg., p. 858, ch. 380, § 9, eff. May 29, 1961;

Acts 1962, 57th Leg., 3rd C.S., p. 2, ch. 2, § 2, eff. May 3, 1962; Acts 1965, 59th Leg., p. 268, ch. 111, § 3, eff. May 6, 1965; Acts 1965, 59th Leg., p. 500, ch. 258, §§ 1 to 4, eff. Aug. 31, 1965; Acts 1965, 59th Leg., p. 1619, ch. 693, § 2, eff. Aug. 31, 1965; Acts 1967, 60th Leg., p. 317, ch. 151, § 18, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 18, ch. 6, § 2, eff. Feb. 26, 1971; Acts 1971, 62nd Leg., p. 1203, ch. 292, art. 5, § 3, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 1210, ch. 293, § 3, eff. July 1, 1971.]

<sup>1</sup> Article 7047c-1 (repealed).

<sup>2</sup> Article 7084 (repealed).

<sup>3</sup> Article 7105.

<sup>4</sup> Articles 7065b-1 to 7065b-29 (repealed).

<sup>5</sup> Article 7065b-25 (repealed).

<sup>6</sup> Former articles 7047, 7047b, 7047k, 7047l, 7047m, 7057a, 7060, 7060a, 7066b, 7070; Tex.-Gen. art. 3.12 and Penal Auxiliary Laws, arts. 666-20a, 666-21.

<sup>7</sup> Article 695c.

<sup>8</sup> Article 2922-1 (repealed; see now, Education Code).

Acts 1961, 57th Leg., 2nd C.S., p. 514, ch. 3, § 1, which added a subsec. (3A) to § 2 of this article, relating to allocations and appropriations for the Teacher Retirement System, was effective "only for and during the fiscal years beginning September 1, 1961, and September 1, 1962". See, now, article 7083a.2.

Acts 1961, 57th Leg., p. 391, ch. 197, § 1 amended subsections 1 and 4 of section 2 of this article; section 2 of the 1961 act provided: "This Act shall become operative September 1, 1961."

Acts 1961, 57th Leg., p. 858, ch. 380, § 9 added subsection (7) to section 2 of this article; sections 1-8, 10 of the act of 1961, enacted art. 695j, relating to medical assistance to recipients of public assistance.

Acts 1962, 57th Leg., 3rd C.S., p. 2, ch. 2, § 2 amended subsection (4-b) of section 2 of this article; section 1 of the act of 1962 amended Tax.-Gen. art. 9.25 and section 3 made an appropriation.

Acts 1965, 59th Leg., p. 268, ch. 111, §§ 1, 2 amended article 695c by adding section 6-A thereto; section 3 of the amendatory act of 1965 amended section 2 of this article by adding subsection (8); the introductory clause to section 3 of the amendatory act of 1965 provided in part: "said amendment shall be contingent upon and effective at such time as appropriations for such purpose of carrying out the provisions of this Act are authorized by the Federal Government and appropriated and allocated to the State Department of Public Welfare by the Department of Health, Education, and Welfare and/or any other Federal Agencies authorized by law to carry out the provisions or the purposes of this Act."

Acts 1965, 59th Leg., p. 1619, ch. 693, § 2 amended subsection (6) of section 2 of this article; section 1 of the act of 1965 amended article 695c, and section 3 thereof provided that the effective date of the act should be August 31, 1965.

Acts 1967, 60th Leg., p. 310, ch. 151, §§ 1-17, 19-23 are codified as article 695j-1; the introductory clause to section 18, which amends subsection 7 of section 2 of this article, provides in part: "said amendment shall be contingent upon and effective at such time as appropriations for such purposes are authorized by the Legislature".

#### Art. 7083a.1. Deposit of Revenues Collected in Certain Funds when Amount Transferred from "Clearance Fund" Insufficient

If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Blind Assistance Fund", the "Children's Assistance Fund", and the "Old Age Assistance Fund" is not sufficient to provide the allocation from state funds as herein provided for that month, then in that event, there shall be deposited to the credit of the "Blind Assistance Fund", the "Children's Assistance Fund", or the "Old Age Assistance Fund" from the first revenues collected after the first day of the month, which would otherwise go into the General Revenue Fund, such sum, as with the balance on hand in the fund plus the payment from the "Clearance Fund", will make available in the various funds the total amount of state funds for that month as is herein provided.

The allocations shall be and are in lieu of all other state allocations for aid to the blind, aid to dependent children, and old age assistance, and such allocations and appropriations shall not include any funds received from the Federal Government. Provided further, that the administrative expenses of all kinds out of state funds for the remainder of the biennium

ending August 31, 1947 shall be in accordance with the provisions contained in the Departmental Appropriation Bill, being Senate Bill No. 317, Chapter 378, Acts of the Regular Session of the 49th Legislature.<sup>1</sup> [Acts 1947, 50th Leg., p. 22, ch. 14, § 4.]

<sup>1</sup> Acts 1945, p. 810, ch. 378.

#### Art. 7083a.2. Allocations and Payments to Teacher Retirement System; Annual Estimates; Adjustments; Actuarial Report; Matching Contributions

Sec. 1. [Codified as subsection (3A) in art. 7083a, § 2]

Sec. 2. [Effective date provision]

Sec. 3. (1) The provisions of section 1 of this Act<sup>1</sup> shall have no force and effect after August 31, 1963. From and after September 1, 1963, all moneys allocated pursuant to the provisions of House Bill No. 8, Acts of the 47th Legislature, Regular Session, 1941, as amended, and appropriated by the State to the Teacher Retirement System shall be paid to the Teacher Retirement System in equal monthly installments based on the annual estimate by the State Board of Trustees of the Teacher Retirement System of the contributions to be received from the members of said System during the year; provided further, in the event said estimate of the contributions of the members of the System shall vary from the actual amount of the teachers' contributions during the year, then such adjustments shall be made at the close of each fiscal year as may be required.

(2) The allocations and payments provided in Subsection (1) of this section shall be reduced in an amount not to exceed \$9,000,000 for the month of April, 1971, and not to exceed \$6,500,000 each month for the months of May, June, July, and August, 1971. In addition to the allocations provided in Subsection (1) of this section, there shall be allocated to the Teacher Retirement System, beginning on the first day of September, 1971, from the first tax moneys available a total of \$35,000,000 or such an amount as necessary to match contributions from the members of the system for the fiscal year ending August 31, 1971.

Sec. 4. On or before December 31, 1962, an actuarial report on the Teacher Retirement Fund by a certified actuary shall be filed with the State Comptroller, and if upon this report the Comptroller finds the fund to be actuarially sound, then all future estimates thereafter and all allocations, appropriations, adjustments, and payments to the Teacher Retirement System shall be based on the aggregate yearly contributions of members, less the aggregate yearly withdrawals of member contributions.

[Acts 1961, 57th Leg., 2nd C.S., p. 514, ch. 3; Acts 1971, 62nd Leg., p. 17, ch. 6, § 1, eff. Feb. 26, 1971.]

<sup>1</sup> Article 7083a, § 2(3A).

Art. 7083b. Repealed by Acts 1969, 61st Leg., p. 2341, ch. 792, § 5, eff. Jan. 1, 1970

## CHAPTER THREE. FRANCHISE TAX

## Article

7084, 7084a. Repealed.

7084b. Collection and Administration of Tax.

7084½ to 7097. Repealed.

Arts. 7084, 7084a. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7084b. Collection and Administration of Tax

Sec. 1. The state franchise tax levied by Chapter Three, Title 122 of the Revised Civil Statutes, 1925, as amended,<sup>1</sup> heretofore collected and administered by the Secretary of State, shall from the effective date of this Act be collected and administered by the Comptroller of Public Accounts. Payment of all taxes, penalties, interest or any other payments due to the state under Chapter Three, Title 122, Revised Civil Statutes, 1925, as amended, shall be transmitted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer.

Sec. 2. All files, records, returns, forms, equipment and personal property of all kinds used in the collection and administration of the franchise tax shall be transferred from the Secretary of State to the Comptroller of Public Accounts. The Comptroller of Public Accounts shall agree with the Secretary of State on the personal property to be transferred and shall evidence such agreement in a written inventory to be signed by both officers. This agreement when signed by both officers shall be full authority for the Comptroller of Public Accounts to transfer the personal property listed thereon to his control and to enter any inventoried items on his inventory records and delete the same items from the property inventory of the Secretary of State.

Sec. 3. All appropriations made to the Secretary of State for the administration and collection of the franchise tax shall on the effective date of this Act be transferred to the Comptroller of Public Accounts.

Sec. 4. This Act shall not affect or impair any act done or right, obligation or penalty existing or accrued under the authority of the Secretary of State concerning the franchise tax in any manner prior to the effective date of this Act. Notice of the transfer of collection and administration of the franchise tax from the Secretary of State to the Comptroller of Public Accounts may be noted on the docket of any cause involving the franchise tax in any manner in any court in this state with or without formal motion on the part of the state.

[Acts 1959, 56th Leg., p. 705, ch. 325.]

<sup>1</sup> Former article 7084 et seq.

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7 repealed articles 7084 through 7097.

Section 5 of Acts 1959, 56th Leg., p. 706, ch. 325 provided: "It is the intent of the Legislature in enacting this law that the transfer of administration and collection of the franchise tax as provided herein is to be wholly contingent on the submission to the Governor and acceptance by the Governor of a plan for the reorganization of the tax collection functions of the Comptroller of Public Accounts. The Governor shall, by written communication to the Comptroller of Public Accounts, evidence his approval of a reorganization plan agreeable to him. The transfer of the administration and collection of the franchise tax under the provisions of this Act shall be made within forty-five (45) days from the date of such written approval."

Arts. 7084½ to 7087. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7088. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1

Art. 7089. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Arts. 7089a to 7089h. Repealed by Acts 1949, 51st Leg., p. 975, ch. 536, § 14

Arts. 7090 to 7097. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

## CHAPTER FOUR. INTANGIBLE TAX BOARD

## Article

7098. State Tax Board.

7098a. Comptroller Ex Officio Tax Commissioner.

7099. Bond of Commissioner.

7100. Legislative Property Tax Committee.

7101 to 7104. Repealed.

7105. Tax on Intangible Assets.

7105a. Contract Motor Carriers Operating under Permits; Intangible Assets Tax.

7106. Statement Required.

7107. Contents of Statement.

7108. Additional Statements.

7109. Statements Placed before Board.

7110. Passing upon Statement.

7111. Other Duties Regarding Statement.

7112. Capital, How Ascertained.

7113. Board to Certify to Assessor.

7114. Failure to Make Statement.

7115. Receivers and Trustees in Bankruptcy to Report.

7116. Relieved of Other Taxes.

## Art. 7098. State Tax Board

The State Tax Board shall be composed of the Comptroller, the Secretary of State and the State Treasurer. A record of the proceedings of said Board shall be kept at the state Capitol, and shall be open to the inspection of the public.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 645, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 8.]

## Art. 7098a. Comptroller Ex Officio Tax Commissioner

The Comptroller of the State of Texas shall be ex officio Tax Commissioner of the State of Texas. He shall discharge all duties placed upon the Tax Commissioner by any laws now or hereafter in force in this State.

[Acts 1939, 46th Leg., p. 645, § 2.]

## Art. 7099. Bond of Commissioner

Before he enters upon his official duties, the tax commissioner shall execute a bond payable to the State of Texas at Austin, in Travis County, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the Governor, conditioned for the faithful discharge of his official duties as such tax commissioner, and shall take and subscribe the official oath.

[Acts 1925, S.B. 84.]

**Art. 7100. Legislative Property Tax Committee**

Membership; Terms; Vacancies; First Meeting

Sec. 1. (a) Beginning June 1, 1973, the Legislative Property Tax Committee shall be composed of seven (7) members: One (1) public representative appointed by the Governor; two (2) Senators to be appointed by the Lieutenant Governor; two (2) Representatives to be appointed by the Speaker of the House; one (1) attorney-at-law to be appointed by the Chief Justice of the Supreme Court of Texas, and one (1) Assessor-Collector (present, former or retired) of any Texas Tax Unit to be appointed by the Comptroller of Public Accounts.

(b) Committee members shall be appointed for terms of two (2) years commencing on June 1 of odd-numbered years and shall be eligible for reappointment. Any member holding a public office at the time of his appointment to this Committee shall perform the duties of a member of this Committee as additional duties required of him in his other official capacity.

(c) If vacancies occur on the Committee, they shall be filled for the remainder of the term by appointment of new members by the respective officials who appointed the Committee members being replaced.

(d) The Governor shall call the first meeting of the Committee immediately after a majority of the members have accepted appointment.

Duties of the Committee

Sec. 2. The Committee is authorized and directed:

(a) To make a thorough inquiry into the whole process of ad valorem taxation in Texas, together with such investigation into the property tax systems of other states as the Committee deems necessary, and to recommend to the Legislature such changes or modifications of the laws of this State, and such additional laws as may to the Committee or any member thereof, seem necessary or proper to remedy injustice in property taxation, and to facilitate the assessment and collection of ad valorem taxes in Texas.

(b) To make a comprehensive study of the ad valorem tax laws of Texas, past and present, found in constitutional provisions, statutes, charters, ordinances, Rules of Civil Procedure, court decisions, opinions of the Attorney General and orders and regulations of the Comptroller and to prepare and submit to the Legislature and the Supreme Court of Texas a Property Tax Code of laws which shall be uniform as to all Tax Units in the State insofar as possible.

(c) To develop a uniform data processing system for property tax levies, assessments, collections, rolls and reports and make the system available to all tax units.

(d) To study the feasibility of establishing regional computer facilities available to all tax

units or of providing a means for all tax units to use the regional computer facilities created for educational agencies under Chapter 866, Acts of the 61st Legislature, Regular Session, 1969 (Article 2654-3f, Vernon's Texas Civil Statutes),<sup>1</sup> or to use other computer facilities of State agencies and institutions.

(e) To complete, verify, correct and update data on assessed valuations, tax rates, collections and delinquent taxes of all tax units in Texas as compiled by the Delinquent Ad Valorem Tax Study Commission created by Senate Concurrent Resolution No. 4, 61st Legislature, 2nd Called Session, 1969, and to obtain information on assessment ratios, bonded indebtedness and outstanding time warrants of all tax units in the State, and such other statistics on Texas property taxation as the Committee may deem relevant so that the Committee may report to the Legislature the whole amount of ad valorem taxes levied and collected by all tax units, the amount of such revenues which may be lost through failure to make proper levies, assessments and collections and the causes of such losses, and such other matters concerning the property tax in Texas as the Committee, or any member thereof, may deem to be of public interest.

(f) To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said Committee or any member thereof, may desire to examine for the purpose of obtaining or acquiring any information that may in any way aid in securing a compliance with any property tax law in this State by any and all persons, companies, corporation or associations liable to ad valorem taxation under any law in this State, which is now in force, or which may hereafter be enacted.

<sup>1</sup> Repealed by Acts 1971, 62nd Leg., p. 1449, ch. 405, § 54(2). See, now, Education Code, § 11.33(c) to (f).

Powers of the Committee

Sec. 3. (a) The Committee shall make such rules and regulations as it shall deem proper with respect to its own meetings and procedure, and to carry out effectually the purposes for which the Committee is created.

(b) The Committee, or any member thereof, shall at least once in each year visit such counties of the State as the Committee or the Governor may direct, for the purposes of investigating into and aiding in the enforcement of the property tax laws of the State, and especially those concerning the rendition, assessment and collection of taxes.

(c) The Committee shall have power to administer oaths and to subpoena and examine witnesses, and to issue subpoenas duces tecum, and shall have access to and power to order the production before such Committee of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or re-

ceiver, assignee, trustee in bankruptcy, or bailee, whenever such Committee may consider same necessary or proper in the prosecution of any inquiry under or in the execution of any provision of this Act and all such process shall be served under the provisions of law governing the service of process in civil cases, insofar as applicable.

(d) Any person who shall disobey any such subpoena, or subpoena duces tecum, or any such order of said Committee, or who shall fail or refuse to attend as by such subpoena directed, or to testify when so required to do under the provisions of this Act, shall be deemed guilty of contempt, and may be punished therefor by the Committee under provisions of laws applicable to the district courts in such cases.

(e) The Committee also shall have free access to all books and records in the several departments of the State government, and of all tax units in the State, and officials of every State agency, department, institution and tax unit are directed to provide such information as may be requested by the Committee and to assist the Committee in accomplishing its objectives. The State Auditor is expressly authorized and directed to assist the Committee in the development of a property tax data processing system, computer feasibility study and a compilation of property tax statistics as provided in Section 2 above; provided, that if Senate Bill No. 464, now pending, becomes law and an Office of Information Services is established thereunder, then the Office of Information Services is expressly authorized and directed to participate with the Committee and the State Auditor in the development of a property tax data processing system, computer feasibility study and compilation of property tax statistics as provided in Section 2 above.

A tax unit or unit as used in this Act shall mean any governmental agency authorized to levy taxes under the laws of this State.

(f) The Committee shall have power and authority to expend its funds, hereinafter provided, to employ and compensate all necessary consultants, investigators and other personnel, to contract for materials and services as required and to pay travel, telephone and other official expenses approved by the Committee.

#### Special Fee and Fund; Appropriation

Sec. 4. In addition to the fees authorized by Article 7331, Revised Civil Statutes of Texas, 1925, as amended, each County Tax Assessor-Collector shall collect and remit to the Comptroller, as directed, a special fee of One Dollar (\$1) for each delinquent tax receipt, redemption certificate, judgment receipt, or any of them, processed by the County Tax Office, and also for each receipt issued for taxes paid under provisions of Articles 7207, 7208, 7209 and 7346 through 7349, inclusive, of the Revised Civil Statutes of Texas, 1925, or any of them, which are processed or issued for the payment of a tax assessed before January 1, 1973. No additional or special fee may be collected for the processing or issuing of receipts,

certificates, or other documents relating solely to taxes assessed on or after January 1, 1973. The proceeds of this additional fee shall be deposited in the State Treasury as a special fund for the use of the Property Tax Committee herein created.

The payment of this additional fee shall be a condition precedent to the valid issuance of each such receipt or certificate, and the collection and handling of this special fee shall be as directed by the comptroller, with remittances to be made monthly or more frequently, as directed. All moneys deposited in this special fund and any unexpended balance remaining in the fund on June 1, 1973, shall be and the same are hereby appropriated to the use of the Property Tax Committee in carrying out the tasks assigned under this Act, the funds thus appropriated to be disbursed upon written orders of the Committee, with an annual accounting by the Committee to be filed with the State Auditor. This appropriation is made for a two-year period beginning June 1, 1973.

#### Expenses of the Committee

Sec. 5. Members of the Committee shall be reimbursed for their actual expenses incurred in performance of their official duties and may be compensated by order of the Committee for any special additional services performed at the request of the Committee.

#### Repealer

Sec. 6. Articles 7101, 7102, 7103 and 7104, Revised Civil Statutes of Texas, 1925, are hereby expressly repealed and all laws or parts of laws in conflict herewith are repealed to the extent necessary to accomplish the purposes of this Act.

#### Subpoena Power

Sec. 7. No subpoena shall be issued except upon majority vote of said Committee.

#### Gifts and Grants; Receipt and Deposit

Sec. 8. The Committee is expressly authorized to accept and receive gifts and grants, and where any such gifts or grants are required to be deposited in the State Treasury, then the gifts or grants so deposited shall be and the same are hereby appropriated to the Legislative Property Tax Committee for a period of two (2) years beginning on the effective date of this section.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 1063, ch. 221, § 1, eff. Aug. 1, 1971; Acts 1973, 63rd Leg., p. 519, ch. 223, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1756, ch. 638, §§ 1, 2, eff. June 16, 1973.]

Sections 2 and 3 of the 1971 Act provided:

"Sec. 2. This Act shall become effective from and after passage.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 2 of Acts 1973, 63rd Leg., p. 519, ch. 223, provided: "This Act takes effect June 1, 1973."

Arts. 7101 to 7104. Repealed by Acts 1971, 62nd Leg., p. 1066, ch. 221, § 6, eff. Aug. 30, 1971

**Art. 7105. Tax on Intangible Assets**

Each incorporated railroad company, ferry company, bridge company, turnpike, or toll company, oil pipe line company, and all common carrier pipe line companies of every character whatsoever, engaged in the transportation of oil, and in addition each "motor bus company," as defined in Chapter 270, Acts, Regular Session of the Fortieth Legislature, as amended by the Acts of 1929, First Called Session of the Forty-first Legislature, Chapter 78,<sup>1</sup> and each "common carrier motor carrier" operating under certificates of convenience and necessity issued by the Railroad Commission of Texas, doing business wholly or in part within this State, whether incorporated under the laws of this State, or of any other State, territory, or foreign country, and every other individual, company, corporation, or association doing business of the same character in this State, in addition to the ad valorem taxes on tangible properties which are or may be imposed upon them respectively, by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925.<sup>2</sup> The county or counties in which such taxes are to be paid, and the manner of apportionment of the same, shall be determined in accordance with the provisions of Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925. The intangible taxable values of said motor bus companies and said common carrier motor carriers shall be apportioned to the counties in or through which they operate in proportion to the distance in miles of the highways traversed by said carriers in each respective county. Provided, however, that Electric Interurban Railway Corporations are exempt from the provisions of this Article.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 409, ch. 162, § 12; Acts 1941, 47th Leg., p. 269, ch. 184, Art. XIII, § 1.]

<sup>1</sup> Article 911a.

<sup>2</sup> Articles 7098 to 7116.

**Art. 7105a. Contract Motor Carriers Operating under Permits; Intangible Assets Tax**

Each contract motor carrier operating under a contract motor carrier permit issued by the Railroad Commission of Texas, doing business wholly or in part within this State, whether incorporated under the laws of this State, or of any other state, territory or foreign country, and every other individual, company, corporation, or association doing business of the same character in this State, in addition to the ad valorem taxes on tangible properties which are or may be imposed upon them respectively by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which

additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925. The county or counties in which such taxes are to be paid, and the manner of apportionment of the same, shall be determined in accordance with the provisions of Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925. The intangible taxable values of said contract carrier<sup>1</sup> motor carriers shall be apportioned to the counties in or through which they operate in proportion to the distance in miles of the highways traversed by said carriers in each respective county.

[Acts 1955, 54th Leg., p. 909, ch. 358, § 1.]

<sup>1</sup> So in enrolled bill. Word "carrier" should probably be omitted.

**Art. 7106. Statement Required**

Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the possession of said tax commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. [Acts 1925, S.B. 84.]

**Art. 7107. Contents of Statement**

Each such statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

1. The name of the individual, company, corporation, or association making such statement, and the character of its business.
2. If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.
3. The locality of its principal office and the amount and kind of business done by it in this State and the total gross receipts derived from its business within this State, including a due proportion of its interstate business, if it has done any business of that character.
4. Its total authorized capital stock and the number of shares thereof, which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the State.
5. The market value of said shares of stock, or, if they have no market value, the actual value thereof.
6. The assessed value and also the true value of all the tangible property owned by such individual, company, corporation or association in

each county in this State and the total assessed value and also the true value thereof.

7. The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this State, and not specifically used in the business of such individual, company, corporation or association, same to be given by states, and the total assessed value and also the true value of the same.

8. A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount of unpaid debt secured by each such mortgage, lien or charge and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

9. A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments, and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

10. Every such railroad company shall also show in each statement made by it:

11. The total length of all lines of said company, whether within or without this State.

12. The total length of such lines as are within the State.

13. The length of its lines in each of the counties in this State into which its lines extend.

[Acts 1925, S.B. 84.]

#### Art. 7108. Additional Statements

The tax commissioner shall receive all tax statements rendered to him under the provisions of this chapter, and shall indorse upon each the date of receipt thereof, signing such indorsement officially. Said board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper.

[Acts 1925, S.B. 84.]

#### Art. 7109. Statements Placed before Board

On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said tax commissioner shall place before said board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter.

[Acts 1925, S.B. 84.]

#### Art. 7110. Passing upon Statement

Said board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in its power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the State and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any provision of this chapter, said board, and each member thereof, may require and compel, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements and information and such additional evidence, books, papers, documents and information, if any, said board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this State, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such board, at Austin, on a date to be fixed by such board, and request of such board a change or changes in such valuation and apportionment, or cancellation of such valuation and apportionment; and said individuals, companies, corporations, associations, receivers, assignees, trustees, and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board, may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this State; and, such board shall have the same jurisdiction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other per-

sons as is now or may hereafter be conferred by the laws of this State upon the Railroad Commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either, or cancel such valuation and apportionment, as said board may deem just and proper in the premises. [Acts 1925, S.B. 84.]

#### Art. 7111. Other Duties Regarding Statement

In so far as the other evidence and information adduced before said board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto the aggregate market or true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this State and outside of it, in ascertaining the true value of its property within this State, said board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this State, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of the said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said board shall then fix the true value of the property of such individual, company, corporation or association within this State, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this State and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this State, so that there shall be apportioned to this State, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association which is specifically used in its business, as is borne by its total lines or total receipts within this State when compared with the total lines or total receipts both inside and outside of the State of Texas. From the entire value of the property within this State, when ascertained as directed by this chapter, said board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this State, as so ascertained by said board,

and the residue and remainder of value shall be by said board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this State. Said board shall apportion the sum of the said total taxable values within this State to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such company, except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said board shall consider all evidence which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. [Acts 1925, S.B. 84.]

#### Art. 7112. Capital, How Ascertained

Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this State in any character of business embraced within the provisions of the eighth article of this chapter, then the capital and property, or the certificate or other evidences of the rights or interests of such person or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons, shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this law of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. [Acts 1925, S.B. 84.]

#### Art. 7113. Board to Certify to Assessor

Thereafter, and not later than the twentieth day of June of each year, said board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of

June as practicable, certify to the tax assessor of each county to which any portion of such intangible assets of any such individual, company, corporation or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such board to any unorganized county shall be by said board so certified to the tax assessor of the county to which such unorganized county is attached for judicial purposes. The tax assessor of such county, upon receiving such certificate or certificates of said board, shall place, set down and list, upon forms prescribed by the Comptroller for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said board. Such county tax assessor shall extend and prorate upon said rolls the State and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined, declared and certified by such board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the State and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All State and county ad valorem taxes upon all intangible property in this State belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is or as may be provided by law. [Acts 1925, S.B. 84.]

#### Art. 7114. Failure to Make Statement

Any individual, company, corporation or association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at

its proper post-office address or principal place of business, shall forfeit and pay to the State of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the State by the Attorney General; and venue of such suits is hereby fixed within the county of Travis.

[Acts 1925, S.B. 84.]

#### Art. 7115. Receivers and Trustees in Bankruptcy to Report

If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books, and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore provided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer, or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern.

[Acts 1925, S.B. 84.]

#### Art. 7116. Relieved of Other Taxes

Whenever any individual, company, corporation or association, embraced within the eighth article of this chapter, shall pay in full, and within the year for which same may be assessed, all its State and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this State; but no such individual, company, corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible State and county taxes for that year.

[Acts 1925, S.B. 84.]

### CHAPTER FIVE. INHERITANCE TAX

Arts. 7117 to 7144. Repealed by Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b (§ 18); Acts 1945, 49th Leg., p. 546, ch. 332, § 4; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

### CHAPTER FIVE A. ADDITIONAL INHERITANCE TAXES

Art. 7144a. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

## CHAPTER SIX. PROPERTY SUBJECT TO TAXATION AND RENDITION

### Article

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### Art. 7145. All Property Taxed

All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed.

[Acts 1925, S.B. 84.]

### Art. 7146. "Real Property"

Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out

in town lots or otherwise and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in anywise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same, and forms of housing adaptable to motivation by a power connected thereto commonly called "trailers" or "mobile homes," which are or can be used for residential, business, commercial, or office purposes, except those located within the boundaries of an assessing unit for less than 60 days or unoccupied and for sale. The value of any trailer or mobile home shall not be included in the assessment of the land on which it is located, unless both the land and the trailer or mobile home are owned by the same person. If the owner of the trailer or mobile home is not the owner of the land, the trailer or mobile home shall be rendered for taxation separately from the land and taxes assessed shall be a liability of the owner of the trailer or mobile home, and not a liability of the landowner. Land on which a trailer or mobile home is located shall not be subject to execution for the collection of taxes assessed against a trailer or mobile home unless both are owned by the same person.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1710, ch. 560, § 1, eff. Sept. 1, 1969.]

### Art. 7147. "Personal Property"

Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without the State, due the person, to be taxed over and above what he pays interest for, and all other debts due such person over and above his indebtedness; all public stock and securities; all stock in turn-pikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within this State; all shares in any bank organized or that may be organized under the laws of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.

[Acts 1925, S.B. 84.]

### Art. 7147a. Leased Personal Property

Sec. 1. Tangible personal property located in this state held under a lease from a banking corporation,

whether incorporated as a national bank or state bank, either in or out of the State of Texas, shall be considered for all the purposes of ad valorem taxation as the property of the person so holding the same, and the lessee shall at the time and in the manner required by the laws of this state render such leased property for ad valorem taxation to the tax assessors of the taxing jurisdictions where such leased property is located.

Sec. 2. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only.

Sec. 3. This Act shall take effect on January 1, 1970.

[Acts 1969, 61st Leg., p. 1962, ch. 662, eff. Jan. 1, 1970.]

#### Art. 7148. Assessment of Merchandise

Any person, co-partnership, association, or corporation, doing business in this State, and carrying and possessing any stock of goods of whatsoever nature, shall upon demand by the tax assessor of the county in which such stock of goods is located, furnish said tax assessor with a verified copy of the last inventory of said stock of goods, together with the inventory value thereof.

The affidavit to the inventory shall state that said inventory includes every article in the stock carried by such person, co-partnership, association, or corporation and that no part of such stock is owned, operated or controlled by any person, co-partnership, association, or corporation other than the person furnishing such inventory.

Any persons, co-partnerships, associations or corporations who have space leased in which merchandise or any character of business is or was operated on January 1st so making such inventory, shall further state, if such is the case, what persons, associations, co-partnerships or corporations own or control any part of the stock of goods offered for sale and their residence in conjunction with the stock of goods owned by the person, co-partnership, association, or corporation rendering such inventory and not contained in such inventory.

Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such inventory and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation.

[Acts 1925, S.B. 84.]

#### Art. 7149. Definition of Terms

The term, "money," or "moneys," wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this State, is entitled to withdraw in money on demand.

"Credits."—The term, "credits," wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

"Tract or lot."—The term, "tract or lot," and "piece or parcel," of real property, and "piece and parcel" of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

"Town or district."—The words, "town or district," wherever used shall be held to mean village, city, ward or precinct, as the case may be.

"Value."—The term, "true and full value," wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

"Person."—The term, "person," shall be construed to include firm, company or corporation.

[Acts 1925, S.B. 84.]

#### Art. 7150. Exemption from Taxation

The following property shall be exempt from taxation, to-wit:

1. Schools and Churches.—Public school houses and actual places of religious worship, also any property owned by a church or by a strictly religious society, for the exclusive use as a dwelling place for the ministers of such church or religious society, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and which yields no revenue whatever to such church or religious society; provided that such exemption as to the dwelling place for the ministers shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land. All public colleges, public academies, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, and all such buildings used exclusively and owned by persons or associations of persons for school purposes; provided that when the land or other property has been, or shall hereafter be, bought in by such institutions under foreclosure sales made to satisfy or protect bonds or mortgages in which said endowment funds are invested, that such exemption of such land and property shall continue for two years after the purchase of the same at such sale by such institutions and no longer. This provision shall not extend to leasehold estate of real property held under authority of any college or university of learning.

Provided, however, that said schools and churches desiring the right of exemption of the properties hereinabove mentioned, shall first prepare and file with the Tax Assessor of the County in which such property is situated, a complete itemized statement of all of said property, any and every kind whatsoever, which is claimed to be exempt from taxation under the provisions of this particular law, and all property not so listed shall be assessed and it shall be the duty of the Tax Assessor to make levy on the same, and for the Tax Collector to collect the said taxes.

Said itemized list of exemptions when made by the said schools or churches shall be sworn to by some officer of the said schools or church familiar with the facts, and when the same has been filed<sup>1</sup> with the Tax Assessor same shall be by him filed in his office, subject to inspection at any time by any person desiring to see the same.

<sup>1</sup> So in enrolled bill. Session Laws omit the word "filed."

1(a). The term "actual places of religious worship" shall include property owned by a church or by a strictly religious institution or organization, including the personal property therein and the grounds attached to such buildings necessary for the proper use and enjoyment of same, used exclusively to support and serve the spread of a religious faith, and to effect accompanying religious, charitable, benevolent and educational purposes by the dissemination of information on a religious faith through radio, television and similar media of communication. Such church, religious institution or organization shall be, or shall be sponsored by, a faith group, denomination or association of churches, which ordains ministers or elects Christian Science Readers and establishes houses of worship completely dedicated to the propagation of the religious faith of such faith groups, denominations or association of churches.

2. Christian Associations.—Young Men's Christian Association Buildings, and Young Women's Christian Association Buildings, used exclusively for the purpose of furthering religious work, and acting under the approval and co-operation of the State and International Young Men's Christian Association committees and the Young Women's Christian Association committees, the books and furniture contained in such buildings, and the grounds attached thereto necessary for the proper occupancy of such buildings, use and enjoyment of the same, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mentioned religious institutions not used with a view to profit, but for the purpose of maintaining the Association and buildings in doing religious work.

2a. Religious, educational and physical development associations.—That all property owned or used exclusively and reasonably necessary, in conducting any association engaged in the joint and threefold religious, educational and physical development of boys and girls, young men and young women, operating under a State or National Organization of like character, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mentioned religious institutions, not used with a view to profit but for the purpose of maintaining the Association and buildings in doing religious work and for the educational or physical development of boys and girls, young men and young women, shall be exempt from taxation; provided that land property received by said institutions in payment and satisfaction of endowment fund loans or investments shall be exempt for two years only after foreclosure purchase of said land, and no longer.

3. Cemeteries.—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof.

4. All property, whether real or personal, belonging exclusively to this State, or any political subdivision thereof, or the United States, except that in each county in this State, where the State of Texas has or may acquire and own land for the purpose of establishing thereon State farms and employing thereon convict labor on State account, the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the management of the same, shall render said land for taxes to the tax assessor of said county and to the tax assessor of each independent school district in which said property, or any part thereof, is located; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county and independent school district purposes only; and said county and independent school district taxes, including all current taxes and all delinquent taxes, shall be paid annually out of the General Revenue Fund of the State. In arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the State and situated on said land.

4a. Districts and Authorities, property of; payments in lieu of taxes.—All property real or personal belonging exclusively to Districts and Authorities created directly by Acts of the Legislature pursuant to Article XVI, Section 59, of

the Constitution as agencies of the State of Texas, and all property real or personal belonging exclusively to Districts and Authorities created or incorporated under laws enacted pursuant to Section 59, Article XVI of the Constitution; provided that if any such District or Authority has heretofore acquired or does hereafter acquire property which at the time of such acquisition is or was then subject to taxation, and is at the time of its acquisition being used for generating, transmitting, and distributing electric energy or power, such District or Authority shall at the times prescribed by law for the payment of ad valorem taxes make a payment in lieu of taxes to the State of Texas and to the county, city, and such taxing districts within which such property is situated; such payment in lieu of taxes to be in the amount which would be realized by levying an ad valorem tax at the current rate for the then current tax year based on the assessed value of such property for the last current tax year before being acquired by such District or Authority; provided further that no payment shall be made with respect to any property no longer owned by such District or Authority for generating, transmitting, or distributing electric energy or power. Such payment in lieu of taxes shall be made out of the revenues received by such District or Authority from the generation, transmission, or distribution of electric power and energy and the liability for same shall constitute a lien or encumbrance only on the Revenues of such District or Authority, and shall be considered as a part of the operating expenses. Specifically, no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems. It is the expressed legislative intent of this Act that such Districts or Authorities make payments in lieu of taxes only with respect to properties which at the time of their acquisition were on the ad valorem tax rolls of the State of Texas or of any county, city, or any other taxing District of the State of Texas and which at the time of the acquisition were being used for generating, transmitting, or distributing electric power and energy; provided further that it is the expressed legislative intent that no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems, belonging to any such Authority or District.

Also where any city or town acquires real and personal property located outside of its corporate limits and outside of the county in which such city or town is situated, except rural electrification lines owned and operated by it, and which is or may be used in the generation, manufacturing, selling or distributing of electricity, such city or town shall make payment in lieu of taxes on same to the State of Texas, the County, City, School districts and such other

local taxing districts within which such property is located in like manner as hereinabove provided for such Districts or Authorities; provided that this Subsection 4a shall not be applicable to such property acquired by a city or town situated on a county line.

And provided further, that any city or town may make such payments in lieu of taxes to the county in which said city or town is located, provided the city or town elects to make such payment by ordinance or resolution passed by the governing body of said city or town.

5. County buildings.—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected.

6. Poor-houses.—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor.

7. Public Charities.—All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions, including hospital parking facilities, not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons; and any corporation in this state of a non-profit and purely charitable nature and formed for the charitable and benevolent purpose of preventing cruelty to animals, to promote humane and kind treatment of animals, and to aid and assist by all legal and proper means the enforcement of the laws of this state for the prevention of cruelty to animals of every kind and nature.

8. Public libraries.—All public libraries and personal property belonging to the same.

9. Market houses, etc.—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town.

10. Fire engines.—All fire engines and other implements owned by towns and cities used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof.

11. Furniture.—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine.

12. Pensions.—All annual pensions granted by the State or the United States.

13. Buffalo and catalo.—All buffalo and all catalo now in captivity in this State, by whomsoever owned, where such animals are kept and used for experimental purposes in crossing same with cattle for the purpose of producing a better strain of beef animals, or where such animals are kept in parks to preserve the species, and not for profit.

14. Art Galleries, etc.—There are exempted from taxation all property belonging to Art Leagues, Societies of Fine Arts, and Art Museums, whether incorporated or not, which are devoted wholly and without charges (except in those cases in which charges are necessary in order to pay the cost and expense of special exhibits, projects and showings, which special charges are hereby authorized) to the promotion of education and learning; including Art Galleries and exhibits therein contained, the land upon which the same are situated, which is devoted exclusively to such purposes, and also all land, money, pictures and other works of art and all other personal property which may be necessary and in actual use for the purpose of carrying out said educational feature.

15. Property of Boy Scouts.—Hereafter the property of the organization known as the Boy Scouts of America or any local organization affiliated with such organization, shall be exempt from taxation in this State.

[16] Sec. 1-a. Demonstration farms.—All of the lands, buildings, personal property and the endowment funds used exclusively by any persons or association of persons for the maintenance and operation of demonstration farms for the purpose of teaching and demonstrating modern and scientific methods of farming to farmers and others, without charge, and not operated or used with a view to profit, and when any of the income, over and above an amount sufficient to maintain and operate the same, is used and bound for the use of other institutions of public charity.

[17] Sec. 2-a. State prison property; school bond taxes.—Provided that any territory that has been acquired or may hereafter be acquired, by the State of Texas, as a part of any State Prison Farm or property, shall not hereafter be exempt from the payment of its pro rata part of any bond tax of a public school district

of which the said territory was a part at the time bonds of the said district which are now outstanding were issued, or which is a part of said district at the time of the issuance of bonds which may hereafter be voted; and the pro rata part of said tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory for county purposes is of the total assessed valuation of the school district for the year in which such taxes are assessed. Provided, also, that the said bond tax shall be paid by the governing board of management of the State Prison System out of any funds appropriated therefor by the Legislature. It is hereby specifically provided that the said bond tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of said prison system, if any bonds were then outstanding.

[18] Sec. 3-a. State prison property; school maintenance tax.—Provided that any territory that has been acquired or may hereafter be acquired, by the State of Texas, as a part of any State Prison Farm or property, shall not hereafter be exempt from the payment of its pro rata part of any maintenance tax of a public school district of which the said territory was a part at the time said maintenance tax of the said district which are now outstanding was voted, or which is a part of said district at the time any maintenance tax may hereafter be voted by said district; and the pro rata part of said tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory for county purposes is of the total assessed valuation of the school district for the year in which such taxes are assessed. Provided, also, that the said maintenance tax shall be paid by the governing Board or Management of the State Prison System out of any funds appropriated thereby by the Legislature. It is hereby specifically provided that the said maintenance tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of said prison system.

[19] Federation of Women's Clubs.—Hereafter the property of the organization known as the Texas Federation of Women's Clubs of Texas shall be exempt from taxation in this State.

20. American Legion and other Veterans' Organizations.—Hereafter all buildings, together with the lands belonging to and occupied by such organizations known as The American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans and Catholic War Veterans, or any non-profit organization chartered or incorporated under the Texas Statutes for the purpose of preserving historical buildings, sites and land-

marks, not leased or otherwise used with a view to profit, shall be exempt from taxation in this State. Provided, however, that no organization listed by the Attorney General of the United States or the Secretary of State of this State as subversive shall be entitled to exemption from taxation under the laws of this State.

Sec. 21. Property owned or used exclusively and reasonably necessary in conducting any association engaged in the educational development of boys, girls, young men or young women through a program designed to demonstrate the operation of the American business system of private enterprise and operating under a State or National organization of like character.

Sec. 22. The property of all fraternal organizations shall be exempt from taxation for so long as the property is owned and used for charitable, benevolent, religious, and educational purposes, and is not in whole or in part leased out to others, or otherwise used with a view to profit.

The term "Fraternal Organization" as used in this Act shall mean, "A lodge, or lodges, engaged in charitable, benevolent, religious, and educational work."

However, this Act shall not apply to any fraternal organization or lodge which pays to its members, either directly or indirectly, any type of insurance benefit, be it life, health, accident or death benefit, or any other type of insurance; neither shall any organization which shall directly or indirectly participate or engage in any political activity, either in support of or in opposition to any candidate seeking any public office, have or be entitled to benefits as provided under this Act.

[Section 22 of this article added by Acts 1967, 60th Leg., p. 855, ch. 363, § 1, see section 22, post.]

Sec. 22. All real and personal property owned by non-profit corporations (as defined in the Texas Non-Profit Corporation Act), which property is reasonably necessary for, and used for, the promotion of any of the following purposes:

- (1) Libraries and archival institutions
- (2) Zoos
- (3) Restoration and preservation of historic houses, structures and landmarks
- (4) Symphony orchestras, choirs, and chorals
- (5) Theaters of the dramatic arts, historical pageants.

[Section 22 of this article added by Acts 1967, 60th Leg., p. 319, ch. 152, § 1, see section 22, ante.]

Sec. 22a. All real and personal property owned by non-profit corporations (as defined in the Texas Non-Profit Corporation Act) which property is reasonably necessary for, and used for, the promotion of any of the following purposes shall be exempt from all ad valorem taxation:

- (1) Libraries and archival institutions;

- (2) Zoos;

- (3) Restoration and preservation of historic houses, structures and landmarks;

- (4) Symphony orchestras, choirs, and chorals;

- (5) Theaters of the dramatic arts, historical pageants;

- (6) Ecological laboratories used solely by public and private colleges and universities within this State;

- (7) Museums or galleries and museum schools maintained and operated in connection therewith.

Sec. 23. Non-Profit water supply corporations.—All real and personal property, used for nursing care operations or housing for the low-income elderly, owned by a non-profit corporation (as defined in the Texas Non-Profit Corporation Act) or a charitable trust providing nursing care, as licensed by the Texas Department of Health, and providing housing for the low-income elderly, if tax exemption or abatement is a condition for a federally guaranteed loan and if the facility

- (1) operates at least 100 licensed nursing home beds and at least 250 housing units for low-income elderly; and

- (2) is designed for, necessitated by, or is involved in geriatric research programs in the areas of chronic care, paramedical personnel training, nutritional development, and programs of psychological and nutritional research for the elderly, and limited to such purpose.

[Section 23 of this article added by Acts 1969, 61st Leg., p. 1945, ch. 648, § 1, see section 23, post.]

Sec. 23. Nonprofit water supply corporations.—All real and personal property owned by a nonprofit water supply corporation which is reasonably necessary for, and is used in, the operation of the corporation in the acquisition, storage, transportation, sale and distribution of water is exempt from taxation.

[Section 23 of this article added by Acts 1969, 61st Leg., p. 1943, ch. 647, § 1, see section 23, ante.]

Sec. 24. Organizations for promotion of gardening, etc.—All real and personal property used by any non-profit corporation organized for the purpose of providing homes for elderly people sixty-two (62) years of age and older which has no capital stock, where the management of its affairs is vested in a board of trustees who are selected by a church which is a strictly religious society, and where the Articles of Incorporation provide that in the event of a dissolution of the corporation all of its assets and property will go to and vest in said church.

[Section 24 of this article added by Acts 1969, 61st Leg., p. 1950, ch. 652, § 1, see section 24, post.]

Sec. 24. Organizations for promotion of gardening, etc.—All property of organizations, whether incorporated or not, which are devoted wholly to the promotion and encouragement of, or the dissemination of information concerning, the development, propagation, growing, or arrangement of flowers or decorative shrubs, plants, or trees, is exempt from taxation, provided the property is owned and used for such purposes only, is not in whole or in part leased out to others, and is not in any manner operated at a profit or houses any individual or entity which operates a business upon said premises at a profit.

[Section 24 of this article added by Acts 1969, 61st Leg., p. 1943, ch. 647, § 3, see section 24, ante.]

Sec. 25. Nature Conservancy of Texas, Inc.—The real property owned by the Nature Conservancy of Texas, Inc., a Texas non-profit corporation, shall be exempt from taxation.

[Sec. 26]. Garden clubs.—All garden clubs owning real property in Texas shall be exempt from ad valorem taxation.

Sec. 27. Nonprofit corporations providing homes for elderly or handicapped.—There is exempted from taxation all property used by a non-profit corporation organized for the purpose of providing homes for elderly persons sixty-two (62) years old or older or handicapped persons, if the corporation has no capital stock, the management of its affairs is vested in a board of trustees who are selected by a church which is a strictly religious society, and the articles of incorporation provide that in the event of a dissolution of the corporation all of its assets and property go to and vest in the church.

[Sec. 27a]. Nonprofit corporations providing homes for retired teachers.—There is exempt from taxation all real and personal property used by a nonprofit corporation organized for the purpose of providing a home primarily for retired teachers and which has no capital stock and which is dependent upon gifts and contributions for a significant portion of its funding of debt incurred in the construction of such facilities.

Sec. 28. Volunteer fire departments.—A "volunteer fire department" means any company, department or association organized for the purpose of answering fire alarms and extinguishing fires, the members of which receive no compensation or nominal compensation for their services thus rendered. All property, real or personal, owned by a volunteer fire department and used exclusively for fire-fighting purposes is exempt from taxation.

[Section 28 of this article added by Acts 1973, 63rd Leg., p. 93, ch. 53, § 1, see section 28, post.]

Sec. 28. Nonprofit corporations holding property for medical center development.—All real and per-

sonal property owned by a nonprofit corporation, as defined in the Texas Nonprofit Corporation Act, and held for use in the development of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, or for other hospital, medical, and educational uses and uses reasonably related thereto, during the time remaining property is held for the development to completion of such medical center and not leased or otherwise used with a view to profit, shall be exempt from all ad valorem taxation as though such property were, during such time, owned and held by the State of Texas for such health and educational purposes.

[Section 28 of this article added by Acts 1973, 63rd Leg., p. 19, ch. 16, § 1, see section 28, ante.]

[Acts 1925, S.B. 84; Acts 1925, 39th Leg., p. 255, ch. 85, § 1; Acts 1926, 39th Leg., 1st C.S., p. 19, ch. 12, § 1; Acts 1927, 40th Leg., 1st C.S., p. 224, ch. 81, § 1; Acts 1930, 41st Leg., 5th C.S., p. 190, ch. 47, § 1; Acts 1930, 41st Leg., 5th C.S., p. 191, ch. 49, § 1; Acts 1931, 42nd Leg., p. 211, ch. 124, § 1; Acts 1935, 44th Leg., p. 679, ch. 288, § 1; Acts 1937, 45th Leg., p. 401, ch. 201, § 1; Acts 1943, 48th Leg., p. 472, ch. 316, § 1; Acts 1945, 49th Leg., p. 470, ch. 298, § 1; Acts 1955, 54th Leg., p. 752, ch. 271, § 1; Acts 1959, 56th Leg., p. 1098, ch. 500, § 1; Acts 1961, 57th Leg., p. 1087, ch. 487, § 1, eff. Aug. 28, 1961; Acts 1967, 60th Leg., p. 319, ch. 152, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 742, ch. 310, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 802, ch. 336, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 855, ch. 363, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., 2nd C.S., p. 5, ch. 1, Art. 4, § 3, eff. Oct. 1, 1969; Acts 1969, 61st Leg., p. 1943, ch. 647, §§ 1, 3, emerg. eff. June 12, 1969; Acts 1969, 61st Leg., p. 1945, ch. 648, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1950, ch. 652, §§ 1, 2, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2545, ch. 848, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2804, ch. 907, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 19, ch. 16, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 93, ch. 53, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 126, ch. 64, § 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 127, ch. 64, § 3, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 185, ch. 87, § 1, eff. May 14, 1973; Acts 1973, 63rd Leg., p. 186, ch. 87, § 2, eff. May 14, 1973.]

Section 2 of the 1967 amendment, which added section 22 to this article, provided: "Sec. 2. If any part, Section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be invalid, such holding shall not affect the validity of the remaining portions of this Act, and it is declared that such remaining portions would have been enacted in any event."

Section 4 of Acts 1973, p. 127, ch. 64, provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 7150a. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Art. 7150b. Exemption of Property Owned by Church for Minister's Residence

There is hereby exempted from taxation any property owned exclusively and in fee by a church for the exclusive use as a dwelling place for the ministry of such church and which property yields no revenue whatever to such church; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and provided

further, that the fact that the ministry uses a portion of the dwelling as their study, library or office shall not prevent the property from being considered as being used exclusively as a dwelling place. For purposes of this Act, "church" includes a strictly religious society; and "ministry of such church" means these persons whose principal occupation is that of serving in the clergy, ministry, priesthood or presbytery of an organized church or religion, whether they are assigned to a local church parish, synagogue, cathedral or temple or to some larger unit of the church organization and whether they perform administrative functions or not.

[Acts 1931, 42nd Leg., p. 67, ch. 44, § 1; Acts 1961, 57th Leg., p. 898, ch. 396, § 1.]

**Art. 7150c. University Lands Subject to Tax for County Purposes; Valuation**

**Lands Declared Subject to Tax**

Sec. 1. All the lands set apart for the endowment of the University of Texas by Section 15 of Article 7 of the Constitution of 1876, and by Chapter 72 of the Acts of the Regular Session of the 18th Legislature, which are now unsold, are hereby declared to be subject to taxation for county purposes in the counties in which they are located, to the same extent as lands privately owned in said counties.

**Data Submitted to State Tax Board by Comptroller**

Sec. 2. It shall be the duty of the Comptroller of Public Accounts, from records in his office, to submit to the State Tax Board data as to value fixed upon privately owned lands contiguous to the University of Texas lands in the several counties.

**Maps furnished State Tax Board by Commissioner of General Land Office**

Sec. 3. It shall be the duty of the Commissioner of the General Land Office to furnish the State Tax Board with maps showing the location of said University of Texas lands, herein declared to be subject to taxation.

**Valuations by State Tax Board**

Sec. 4. It shall be the duty of the State Tax Board to place the valuation upon which said land shall be assessed and rendered for taxation. It shall further determine the taxable value of lands in each county separately. In arriving at its amount to be paid in taxes the value of the land only shall be considered, and not the value of any buildings or other improvements, owned by the State, and situated upon said land.

**Statements to Comptroller by Tax Collector**

Sec. 5. The Tax Collector of each county which contains any of the land enumerated in Section 1, hereof, shall render to the Comptroller of Public Accounts by October 1 of each year a certified statement showing the values fixed by the State Tax Board upon said lands, the county rate of taxation, and the amount due said county as taxes upon said land.

**Comptroller's Warrants to Pay Tax**

Sec. 6. It shall be the duty of the Comptroller of Public Accounts to issue warrants upon the General Fund to pay taxes due each county, beginning with taxes assessed for the year 1931, and annually thereafter; said warrants to be issued and mailed to the several counties within the time as now provided by law for the payment of county taxes on privately owned lands.

[Acts 1931, 42nd Leg., p. 136, ch. 93.]

**Art. 7150d. Exemption of Headquarters Buildings of Texas Congress of Parents and Teachers**

Sec. 1. All headquarters buildings designated as State office buildings of the Texas Congress of Parents and Teachers, from and after the passage of this Act, shall be exempt from all State and County taxes, including all ad valorem taxes.

Sec. 2. All headquarters buildings designated as State office buildings of the Texas Congress of Parents and Teachers, from and after the passage of this Act, shall be exempt from all occupation taxes.

Sec. 3. If any part or parts of this Act shall be held unconstitutional, such decision shall not affect the validity of the remaining portions hereof, and such is hereby declared to be the intention of the Legislature.

[Acts 1939, 46th Leg., Spec.Laws, p. 965.]

**Art. 7150e. Girl Scouts of America; Property Exempt**

Hereafter the property of the organization known as the Girl Scouts of America or of any local organization affiliated with such organization shall be exempt from taxation in this State.

[Acts 1947, 50th Leg., p. 795, ch. 395, § 1.]

**Art. 7150f. Property Moving in Interstate Commerce**

All property consigned to a consignee in this State from outside this State to be forwarded to a point outside this State, which is entitled under the tariffs, rules, and regulations approved by the Interstate Commerce Commission to be forwarded at through rates from the point of origin to the point of destination, if not detained within this State for a period of more than ninety (90) days, shall be deemed to be property moving in interstate commerce, and no such property shall be subject to taxation in this State; provided, that goods, wares and merchandise, whether or not moving on through rates, shall be deemed to move in interstate commerce, and not subject to taxation in this State if not detained more than nine (9) months where such goods, wares and merchandise are so held for assembly, storage, manufacturing, processing or fabricating purposes; providing further that personal property consigned for sale within this State must be assessed as any other

personal property. Provided further, that all laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. [Acts 1963, 58th Leg., p. 576, ch. 208, § 1.]

**Art. 7150g. Exemption of Property of Non-Profit Educational Corporations Maintaining Theater-Schools**

Any non-profit educational corporation organized to promote the teaching and study of the art of theatrics which (a) is exempt from Federal income taxes, (b) maintains a theater-school program with regular classes for at least four grades, formal text books and curriculum, an enrollment of 150 or more students during each of at least two semesters every calendar year and a faculty substantially all of whom hold degrees in theater arts from accredited colleges or universities and (c) offers apprenticeship or other practical training in theater management and operation for college students at the undergraduate or graduate level and/or similar training for playwrights, actors and production personnel shall be deemed an institution of purely public charity and all its property shall be exempt from ad valorem taxes. The exemption contained in the preceding sentence shall apply even though such corporation offers theatrical productions to which an admission is charged, provided that a majority of such productions each season shall have significant literary merit of the character which contributes to the educational program of secondary schools, colleges or universities. Provided, however, the exemption provided for in this Section shall apply only to the property of such corporation which is actually used for the purposes specified herein. If at any time such non-profit educational corporation shall in any fiscal year become self-sustaining from all sources of income other than gifts, grants and donations then this Act shall be null and void.

[Acts 1967, 60th Leg., p. 334, ch. 157, § 1, eff. Aug. 28, 1967.]

**Art. 7150h. Exemption of Property of Disabled and Deceased Veterans**

**Exemption**

Sec. 1. There are exempted from all property taxes levied by the state, a county, city, town, school district, special district, or other political subdivision of the state the value of assessed property owned by a disabled veteran or by the surviving spouse or children of a deceased veteran in the amounts provided in this Act.

**Disabled Veteran Defined; Percentage of Disability**

Sec. 2. (a) A "disabled veteran" is a person classified as a disabled veteran by the Veterans Administration of the United States (or the successor of that agency) or by the branch of the armed services of the United States in which he served, and whose disability is service connected.

(b) The percentage of disability under this Act is the percentage of disability that is certified for the veteran by the Veterans Administration of the United States or by the branch of the armed services of the United States in which he served.

**Amount of Exemption**

Sec. 3. (a) A disabled veteran whose disability is less than 10 percent is not entitled to an exemption under this Act.

(b) A disabled veteran whose disability is 10 percent or more, but not more than 30 percent, is entitled to an exemption of the first \$1,500 of the assessed value of his property.

(c) A disabled veteran whose disability is more than 30 percent, but not more than 50 percent is entitled to an exemption of the first \$2,000 of the assessed value of his property.

(d) A disabled veteran whose disability is more than 50 percent, but not more than 70 percent is entitled to an exemption of the first \$2,500 of the assessed value of his property.

(e) A disabled veteran whose disability is more than 70 percent is entitled to an exemption of the first \$3,000 of the assessed value of his property.

(f) A disabled veteran whose disability is 10 percent or more and who is 65 years old or older is entitled to an exemption of the first \$3,000 of the assessed value of his property.

(g) A disabled veteran whose disability consists of the loss of the use of one or more limbs, total blindness in one or both eyes, or paraplegia is entitled to an exemption of the first \$3,000 of the assessed value of his property.

**Qualification under more than one Exemption**

Sec. 4. A disabled veteran who qualifies under more than one of the exemptions under Section 3 of this Act is not entitled to aggregate or combine the value of the exemptions, but may take the exemption allowing the largest exclusion.

**Surviving Spouse's Exemption**

Sec. 5. The surviving spouse of a person who dies while on active duty in the armed services of the United States is entitled to an exemption of the first \$2,500 of the assessed value of the spouse's property during the period that the surviving spouse remains unmarried.

**Surviving Child's Exemption**

Sec. 6. A surviving child of a person who dies while on active duty in the armed services of the United States is entitled to an exemption of the first \$2,500 of the assessed value of the child's property during the period that the child is under 21 years old and is unmarried.

Effective Date of Exemption

Sec. 7. An exemption authorized under Sections 5 and 6 of this Act becomes effective on January 1 of the year following the year in which the member of the armed services of the United States died, and the eligibility of the surviving spouse or child is determined on the effective date of the exemption.

Deceased Disabled Veteran; Exemption of Surviving Spouse and Estate

Sec. 8. (a) Except as provided in Subsection (b) of this section, the surviving spouse of a deceased disabled veteran, who at the time of his death was entitled to an exemption under Section 3 of this Act, is entitled to an exemption equal to the amount the deceased disabled veteran was entitled to receive at the time of his death, if the surviving spouse is unmarried.

(b) The estate of a deceased disabled veteran is entitled to an exemption from property taxes in an amount equal to the amount to which the deceased disabled veteran was entitled at the time of his death. If the estate of the deceased veteran takes or is entitled to take the exemption allowed in this subsection, the exemption allowed in Subsection (a) of this section is not applicable.

Deceased Disabled Veteran; Exemption of Qualified Child

Sec. 9. (a) This section applies only if there is no person or estate receiving an exemption under Section 8 of this Act.

(b) Each qualified child of a deceased disabled veteran who was entitled to an exemption under Section 3 of this Act at the time of his death is entitled to an exemption from property taxes in an amount determined under Subsection (c) of this section.

(c) The amount of the exemption allowable under Subsection (b) of this section is determined by dividing the amount of the exemption to which the deceased disabled veteran was entitled at the time of his death by the number of qualified children.

(d) A qualified child of a disabled veteran is any child who is less than 21 years old, is unmarried, and has property which would be subject to taxation by any taxing unit in the state without regard to the exemption authorized in this section.

Multiple Exemptions

Sec. 10. (a) A person who is entitled to an exemption under this Act as a disabled veteran and also is entitled to an exemption as the surviving spouse or child of a deceased disabled veteran or as the surviving spouse or child of a person who died while on active duty in the armed services of the United States is entitled to add the value of each exemption and is exempt from property taxes in an amount equal to the sum of the exemptions.

(b) A person who is entitled to an exemption as the spouse of a deceased disabled veteran is not entitled to an exemption as the child of a disabled veteran or as the child of a person who died while on active duty in the armed services of the United States.

Tax Assessor-Collector's Form for Claiming Exemption

Sec. 11. The tax assessor-collector of each taxing unit responsible for assessing and collecting property taxes in this state shall provide to each person appearing at the office of the tax assessor-collector to render his property or to have his property assessed and to each person personally visited by the tax assessor-collector to assess property a form on which the person may claim any exemption allowed under this Act.

Regulations of Comptroller of Public Accounts

Sec. 12. The comptroller of public accounts shall make regulations providing for the manner in which proof of eligibility of an exemption may be made. The comptroller may also make regulations concerning the duties of tax assessor-collectors under this Act and the manner in which an exemption may be claimed.

Purpose of Act

Sec. 13. The purpose of this Act is to provide for exemptions under the authority of Article VIII, Section 2(b), of the Texas Constitution.

Act Declared Non-Severable

Sec. 14. The provisions of this Act are declared to be non-severable, and if any provision of this Act is declared invalid by a final judgment of a court of competent jurisdiction as to any person, the Act is void.  
[Acts 1973, 63rd Leg., p. 668, ch. 281, eff. Aug. 27, 1973.]

**Art. 7151. When to be Rendered; Condemning Authorities Considered Owners When; Proration of Taxes**

Sec. 1. All property shall be listed for taxation between January 1st and April 30th of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract, or fact, been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1st and December 31st of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining.

Provided further, that if the United States Government or any of its agencies or any other body politic having the power of condemnation shall take over the possession of property under authority of any law authorizing it to condemn said property, or under an option to buy said property from the owner, or under an agreement by the owner to sell said property, or shall comply with the laws relating to condemnation to such an extent as to entitle it to the possession of said property, or to constitute a taking thereof from the owner or person in whose name title rests, then such condemning authority shall be considered the owner of said property for the purposes of all taxation from the date of taking possession thereof, or from the date of its complying with the condemnation laws to the extent that it is entitled to possession of said property, or from the date it has complied with the condemnation laws to the extent that there has been a taking of said property from the owner, whichever occurs first.

Sec. 2. During the tax year between January 1 and October 1, when title to or any interest in land being acquired by the United States or the State of Texas, or any of its agencies, including cities, towns, villages, water or conservation districts, flood control, levee, or waterway improvement districts, is voluntarily conveyed by the owner thereof or is acquired for public use by condemnation as provided by law, such agency's authorized tax official shall estimate the amount of taxes which would have been or will become due and payable for the year had the land not been acquired for public purposes.

When such estimate of yearly taxes is determined as aforesaid, such tax official of the taxing authorities or agencies of this state shall prorate such taxes on the basis of the number of months the land remained in private ownership or control, such date to be determined by the date of conveyance to the government or the date of order of possession of the court having jurisdiction thereof, and shall certify same, and shall accept or collect said prorated taxes and issue his receipt therefor which receipt shall constitute a full and complete release of all taxes and shall be in full satisfaction of all such liens, express or inchoate, in favor of the tax units aforesaid. Such proration shall be based upon the tax assessed for the preceding year, unless the tax for the current year shall have been by then determined and set, in which event the proration shall be based on the new assessment and rate. The legally designated tax official shall account for the funds collected as herein provided in the same manner as required under existing law relating to such taxes. [Acts 1925, S.B. 84; Acts 1943, 48th Leg., p. 190, ch. 109, § 1; Acts 1951, 52nd Leg., p. 359, ch. 484, § 1; Acts 1969, 61st Leg., p. 1221, ch. 389, § 1, eff. May 29, 1969.]

#### Art. 7152. How Rendered

All property shall be listed or rendered in the manner following:

(1) By the owner. Every person of full age and sound mind, being a resident of this State,

shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

(2) As agent. He shall also list all lands or other real estate, moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company, or corporation, whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

(3) Minor. The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

(4) Separate property of married person. The separate property of each spouse shall be rendered by the owner thereof, but the husband or wife of the owner may act as agent of the owner in such rendition.

(5) Idiot. The property of any idiot or lunatic, by the person having charge of such property.

(6) Cestui que trust. The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

(7) Receivers. The property of corporations whose assets are in the hands of receivers, by such receivers.

(8) Corporations. The property of a body politic or corporate, by the president or proper agent or officer thereof.

(9) Copartnership. The property of a firm or company, by a partner or agent thereof.

(10) Manufactories. The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1132, ch. 455, § 1; Acts 1965, 59th Leg., p. 980, ch. 474, § 1.]

#### Art. 7153. Where Rendered

All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the State or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated.

[Acts 1925, S.B. 84.]

#### Art. 7154. Rendered in but One County

Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county.

[Acts 1925, S.B. 84.]

**Art. 7155. Livestock**

All persons, companies and corporations owning pastures in this State which lie on county boundaries shall be required to list for assessment, all livestock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of livestock in pasture not their own shall list said livestock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such livestock shall be paid to the tax collector of the several counties in which such livestock is listed and assessed.

[Acts 1925, S.B. 84.]

**Art. 7155a. Local Option Elections in Certain Counties Respecting Annual Tax for Domestic Livestock Protective Fund****Additional Assistance to Law Enforcement Officers**

Sec. 1. In all counties in this State having ten thousand (10,000) or more cattle, sheep, and goats rendered for taxation, the qualified voters of such county may, as hereinafter provided, employ additional assistance to the law enforcement officers of such county as hereinafter provided.

Upon the petition of ten (10) per cent of the qualified voters of such county, presented to the Commissioners Court in open Regular Session, requesting such Court to order an election to be held in such county to determine whether or not said Court, when acting as a Board of Equalization in such county, shall levy, and cause to be assessed and collected an annual tax not to exceed one (1) cent per head on all sheep and goats and not to exceed five (5) cents per head on all cattle, within such county; said Court shall order such election to be held within such county, in accordance with the petition therefor; and said Court shall forthwith order such election to be held in the voting places within such county, upon a day not less than ten (10), nor more than twenty (20) days, from the date of said order and the order thus made, shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity have been duly complied with; and provided further that such Court shall appoint such officers to hold such election as is now required to hold general elections. The expenses of such election shall be borne by the county wherein such election is ordered and held. In such election so held, the ballot shall read as follows:

"For the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

"Against the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

Returns of such election shall be made by the presiding officer of the precincts of such county where such election is held, to the County Judge of

said county, who shall forthwith call the Commissioners Court together for the purpose of canvassing the returns; and if it shall be found by the Commissioners Court, upon a canvass of such returns, that a majority of the qualified voters of the county wherein such election is held, is in favor of the levy, assessment, and collection of the annual tax on sheep and goats of not more than one (1) cent per head and on cattle not more than five (5) cents per head, then said Court shall forthwith declare the results of said election and give public notice thereof by proclamation of said Court to be issued and posted at three (3) public places of the county in which such election is held; and shall thereafter, at the next succeeding meeting of said Court acting as the Board of Equalization for such county, levy and cause to be assessed and collected by the Assessor and Collector of Taxes for such county, not more than one (1) cent per head on all sheep and goats and not more than five (5) cents per head on all cattle within such county, on the 1st day of January preceding the date of such meeting.

**Tax Moneys to be Deposited in Domestic Livestock Protective Fund**

Sec. 2. All moneys assessed and collected by the Assessor and Collector of Taxes for each county of this State as provided for in Section 1 hereof, shall be paid by said Collector unto the County Treasurer of such County, and said Treasurer shall deposit said moneys to a fund to be known as "The Domestic Livestock Protective Fund," and such moneys shall never be expended for any other purpose than is herein provided.

**Employment of Enforcement Officers by Commissioners Court; Compensation; Duties; Reports**

Sec. 3. To aid in the enforcement of all the Penal Laws of this State and in ferreting out and detecting any violation thereof, it shall be the duty of the Commissioners Court of such county adopting the provisions hereof, and they are hereby authorized and required to employ for such service, in addition to the officers now provided for by law, as many other competent and discreet persons as, in the judgment of said Court, is deemed necessary for said purposes, and shall fix their compensation; provided however, no such person, or persons, shall be paid in excess of Five Dollars (\$5) per day, while in actual service; and provided further that at no time, shall the moneys expended in the payment of such person, or persons, for such services, exceed the amount of money collected therefor. Such Court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said Court as to the manner in which they have performed such duties.

[Acts 1937, 45th Leg., p. 831, ch. 408.]

**Art. 7156. Taxes not to be Paid Twice**

Any lands which may have been assessed in any county according to the abstract of land titles, and

the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void.

[Acts 1925, S.B. 84.]

#### Art. 7157. Vessels

All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats and other water craft shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed.

[Acts 1925, S.B. 84.]

#### Art. 7158. Deposits with State

All securities of every kind and character, and all moneys, required or permitted by law to be deposited by any person, firm residing in this State, or corporation organized under the laws of Texas, with the State Treasurer, or other State officer or department, shall be taxed in the county in which the person owning same resides, or where such firm has its place of business, or at the domicile of such corporation, and at no other place.

[Acts 1925, S.B. 84.]

#### Art. 7159. Railroads, Telegraphs, Etc.

All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the Comptroller.

[Acts 1925, S.B. 84.]

#### Art. 7160. Listing for Others

Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs.

[Acts 1925, S.B. 84.]

#### Art. 7161. Sworn List

Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor.

[Acts 1925, S.B. 84.]

#### Art. 7162. Requisites

Such statement shall truly and distinctly set forth:

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.
12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motorcycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.
27. Every annuity or royalty, the description and value thereof.
28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.
29. The value of goods, wares and merchandise of every description which such person is required to list as a merchant (in hand on the first day of January of each year).

30. Value of materials and manufactured articles which such person is required to list as a manufacturer.

31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.

32. Number of steam engines, including boilers, and the value thereof.

33. Amount of moneys of bank, banker, broker or stock jobber.

34. Amount of credits of bank, banker, broker or stock jobber.

35. Money on hand or on deposit, in or out of the State, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.

36. Amount of credits other than of bank, banker, broker or stock jobber.

37. Amount and value of bonds and stocks other than United States Bonds.

38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.

39. Value of all property of companies and corporations other than property hereinbefore enumerated.

40. Value of stock and furniture of hotels and eating houses.

41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.

42. Every franchise, the description and value thereof.

43. Value of all other property not enumerated above.

[Acts 1925, S.B. 84.]

#### Art. 7163. Certain Credits and Stocks not to be Listed

No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation.

[Acts 1925, S.B. 84.]

#### Art. 7164. Rendition of Real Estate

Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined.

[Acts 1925, S.B. 84.]

#### Art. 7164a. Address of Owner Required to be Given on Rendering Real or Other Property for Taxation

Hereafter in all counties in the State of Texas containing a population of not less than ten thousand, nine hundred and seventy (10,970), nor more than ten thousand, nine hundred and ninety (10,990), according to the last preceding Federal Census, any one owning real estate or other taxable property situated in said county on rendering the same for taxation to the County Tax Assessor and Collector for assessment for State and County ad valorem taxes shall render the same in the name of the owner thereof giving his correct post-office address at the time of such rendition, and if any representative or agent on and in behalf of said owner or owners shall render the same for taxation, said agent or representative shall likewise render the same in the name of the true owner of the said property giving the owner's or owners' correct post-office address at the time of said rendition.

[Acts 1937, 45th Leg., p. 792, ch. 387, § 1.]

#### Art. 7164b. Failure to Give Address of Owner on Rendering Property for Taxation

Any person or persons failing to comply with any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Dollar (\$1) nor more than Twenty-five Dollars (\$25).

[Acts 1937, 45th Leg., p. 792, ch. 387, § 2.]

#### Art. 7165. Assessment of Personal Property of Bank, Etc.

Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the as-

essor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate.

[Acts 1925, S.B. 84.]

#### Art. 7166. Assessment of Real Estate by Banks

Every banking corporation, State or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the tax assessor at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town

where said bank is located, render at their actual value to the tax assessor all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or State banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals.

[Acts 1925, S.B. 84.]

#### Savings Clause

*Acts 1969, 61st Leg., p. 2470, ch. 831, which amended Insurance Code, art. 4.01, provided in section 4: "Nothing in this Act shall be construed as amending or in any way changing the provisions, applicability or effect of Article 7166, Texas Civil Statutes."*

#### Art. 7167. Deductions

No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor or<sup>1</sup> account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in original bill. Should probably read "on."

#### Art. 7168. Assessment by Railroads

Every railroad corporation in this State shall deliver a sworn statement, on or before the thirtieth day of April of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this State.

[Acts 1925, S.B. 84.]

#### Art. 7169. Railroads to Return Sworn Statements

Every railroad corporation in this State shall deliver a sworn statement on or before the first day of April of each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, on the first Monday in June in each year, or as soon thereafter as practicable; and such board shall certify such final valuation when made without delay to the Comptroller, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such roads shall run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties; and the assessor of each of said counties shall list and enter the same upon the rolls for taxation as other personal property situated in said county. And said railroad corporation shall also report in a separate sworn statement all rolling stock operated by it, under rental, hire, lease or other form of contract, which it does not render for taxation, giving the true and full value of such rolling stock and the amount paid or promised to be paid for rental, hire, lease or use under other form of contract, together with the name of person, firm, corporation or association owning such rolling stock, and together with the post-office address of such person or firm, or if it be a corporation or association, then the city, county and State of its principal office; and if from said statement it appears that said rolling stock belongs to any person residing in this State, or to any firm doing business in this State, or to any corporation or association organized under the laws of this State, then said statement shall be certified by the tax assessor to whom it is made to the tax assessor of the county in which such person lives, or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the Comptroller, and apportioned by the Comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of this State, then said

statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the Comptroller, and the valuation apportioned against said owner by the Comptroller, in the same manner as rolling stock belonging to the railroad corporation furnishing the list.

[Acts 1925, S.B. 84.]

#### Art. 7169a. Tax on Petroleum Tank Cars

All petroleum tank cars used in this State shall be liable for taxation in the county where such tank cars are maintained, assembled and/or used for storing or shipping petroleum products, or where the owner or lessee of such tank cars maintains an office or loading rack; provided, that where any railroad company owns tank cars the same shall be subject to taxation in the same manner as other rolling stock owned by such railroad company; such tank cars shall be liable for taxation in the same manner as is now provided by law for the taxation of personal property, and to secure the tax due on any such property the State shall have a first lien on such tank cars liable for any taxes due and unpaid.

[Acts 1930, 41st Leg., 5th C.S., p. 181, ch. 41, § 1.]

#### Art. 7170. Corporate Property

All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation.

[Acts 1925, S.B. 84.]

#### Art. 7171. Assessments in Owner's Name

All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof.

[Acts 1925, S.B. 84.]

#### Art. 7172. Lien for Taxes

Sec. 1. All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title.

Sec. 2. (a) When a mineral estate is severed (either by reservation, lease or grant) from the surface estate, and when different persons own the mineral estate and surface estate, the lien resulting from ad valorem taxes assessed against each interest in the mineral estate is valid and enforceable only for the duration of the interest it encumbers. After an interest in the mineral estate terminates, the ad valorem tax lien encumbering it expires and is not enforceable.

(1) against any part of the surface estate not owned by the owner of the interest in the mineral estate which was encumbered by the tax lien;

(2) against any part of the mineral estate not owned by the owner of the interest in the mineral estate which was encumbered by the tax lien;

(3) against the owner of the surface estate as a personal obligation, unless he also owns the interest in the mineral estate which was encumbered by the tax lien; or

(4) against any personal property not owned by the owner of the interest in the mineral estate which was encumbered by the tax lien.

(b) Subsection (a) of this section does not prohibit recovery of delinquent ad valorem taxes, interest, or penalty, from the owner of any interest in the mineral estate against which the taxes were assessed, and the interest owner remains personally liable for all taxes assessed against his interest in the mineral estate before it terminated.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1814, ch. 696, § 1, eff. Aug. 28, 1967.]

Sections 2 and 3 of the amendatory act of 1967 provided:

"Sec. 2. Where property is owned under circumstances that would provide relief from a lien by this Act, and such property is subject to a lien on the effective date of this Act, and no litigation to enforce such lien is then pending such liens shall terminate and cannot be enforced in any court of the State of Texas two years after the effective date of this Act.

"Sec. 3. This Act applies to ad valorem taxes assessed on and after January 1, 1968."

**Art. 7173. Leasehold Interests in Land, Buildings, or Improvements Owned in Whole or in Part by the State, a County, a City or Cities, a School District or any other Governmental or Public Entity or Body Politic**

Property held under a lease for a term of one year or more, or held under a contract for the purchase thereof, belonging to the State, a county, a city or cities, a school district, or any other governmental or public entity, authority or body politic or that is exempt by law from taxation in the hands of the owner thereof, except for properties held, owned or dedicated, in trust or otherwise, to the support, maintenance or benefit of institutions of higher education, shall be considered for all the purposes of taxation, as the property of person so holding the same, except as otherwise specially provided by law; however this shall not include:

(a) A lease or use of a public transportation building or facility, or

(b) A use by way of concession in or relative to the use of a public airport terminal, public park, public market, fairground or similar public property, or

(c) A grazing or agricultural lease on property owned by such a governmental or public entity.

Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided that the same can be found by the collector; but, if the timber cannot be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Land Commissioner shall furnish by the first of January each year to the various commissioners courts and the tax assessors of this State a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 3029, ch. 997, § 1, eff. June 15, 1971.]

**Art. 7173a. Mineral Rights in Public School Lands Sold Subject to Tax while under Lease by Owner**

Sec. 1. Where public school lands sold with a mineral reservation have been heretofore leased by the surface owner as agent of the State and production has been secured thereon, the one-sixteenth of the oil and gas therein, which he receives from the lessee or purchaser of the mineral estate as compensation for damages to the soil, and all reserved royalty interest of the owner arising under leases hereafter executed, when production is secured, is and shall be subject to taxation as real property, so long as the lease is in full force and effect, and the same shall be listed or rendered, and assessed, and the taxes paid by the owner thereof in the county where the lands are situated in accordance with the provisions of law applicable to assessments, and collection of taxes on real estate.

Sec. 2. In the event the assessor has failed to assess the one-sixteenth of the oil and gas in said lands or the reserved royalty interest mentioned for any one or more years, and the same remains unrendered and the taxes have not been paid, he shall list the property and assess it for taxes, for the years unrendered, any year thereafter in making his annual assessments, and the assessment shall be deemed

as valid as the one for that year, and the owner shall pay the taxes for those years when paying the taxes for the year in which the back assessments were made.

[Acts 1931, 42nd Leg., p. 176, ch. 103.]

**Art. 7174. Valuation of Property for Taxation**

Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such price as such property, including a mine, or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates on non-exempt property shall be valued at such price as such leasehold estates would bring at a voluntary sale for cash, and taxable leasehold estates on exempt property shall be valued at such price as such leasehold estates would bring at a voluntary sale thereof for cash, based upon the value of a comparable improvement if located on non-exempt property, with reductions for reversionary interests, restrictions on use, and credit for normal rental.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 3030, ch. 997, § 1, eff. June 15, 1971.]

**Art. 7175. Currency and Coin**

Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be

hereafter subject to taxation as money on hand or on deposit, under the laws of this State. [Acts 1925, S.B. 84.]

**Art. 7176. Assessed as Money on Hand**

The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this State. [Acts 1925, S.B. 84.]

**CHAPTER SEVEN. ASSESSMENT AND ASSESSORS**

Article

- 7177 to 7181. Repealed.
- 7181a. Construction of "Assessor" and "Collector."
- 7182. Repealed.
- 7183. May Administer Oaths.
- 7184. The Oath.
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**Arts. 7177 to 7180. Repealed by Acts 1933, 43rd Leg., p. 598, ch. 197, § 6**

**Art. 7181. Repealed by Acts 1935, 44th Leg., p. 648, ch. 262, § 2**

**Art. 7181a. Construction of "Assessor" and "Collector"**

Hereafter, whenever the words "Assessor," "Assessor of Taxes," "Collector," "Collector of Taxes," or "Tax Collector" are used, either in Articles 7181 to 7359, inclusive, of Title 122 of the 1925 Revised Civil Statutes of Texas, including all amendments thereto, as well as the Revised Code of 1925, including all amendments being known as the 1925 Revised Civil Statutes of Texas, same shall be applicable to and mean the one office or officer of Assessor and Collector of Taxes, and shall be so construed as to accomplish the object and intent and carry out the purpose of Sections 14 and 16 of Article 8, of the Texas Constitution, as the same was amended on November 8, 1932.

[Acts 1933, 43rd Leg., p. 598, ch. 197, § 5.]

**Art. 7182. Repealed by Acts 1935, 44th Leg., p. 648, ch. 262, § 2****Art. 7183. May Administer Oaths**

Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties.

[Acts 1925, S.B. 84.]

**Art. 7184. The Oath**

The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: "I, \_\_\_\_\_ (filling the blank with the name of the person subscribing) do solemnly swear or affirm that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county and personal property not in this county subject to taxation in this county by the laws of this State, on the first day of January, A.D. 19\_\_\_\_ (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God."

[Acts 1925, S.B. 84.]

**Art. 7185. Where Oath May be Made**

The owner or agent who is required under the laws of this State to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this State, or any officer out of this State that is authorized by law to take acknowledgments of instruments for record in this State, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in

said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify the person from whom he received said list that he has referred said valuation to the board of equalization.

[Acts 1925, S.B. 84.]

**Art. 7186. Failure to Administer or Attest Oath, etc.**

The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in the second preceding article to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon satisfactory information furnished the county judge; and for each failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes.

[Acts 1925, S.B. 84.]

**Art. 7187. Fraud Upon Public Revenue**

Any evasions by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this State for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State.

[Acts 1925, S.B. 84.]

**Art. 7188. Taxpayer to Make Oath**

Each assessor of taxes shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State.

[Acts 1925, S.B. 84.]

**Art. 7189. When Assessments Made**

Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person, and listing the property required by law in his name, and requiring such person to make a statement under said oath of such property in the form hereinafter prescribed.  
[Acts 1925, S.B. 84.]

**Art. 7190. Irregular Assessments Valid**

Should any property be listed or assessed for taxation after April 30th of any year, or should the assessor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessment shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law.  
[Acts 1925, S.B. 84.]

**Art. 7191. If Taxpayer is Absent**

If any person who is required by this title to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The tax assessor shall carefully note in a book the date of leaving such notice.  
[Acts 1925, S.B. 84.]

**Art. 7192. Or Refuses to List**

In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the tax assessor; the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the tax assessor shall note in a book such fact, together with the name of such person.  
[Acts 1925, S.B. 84.]

**Art. 7193. Duty in Such Cases**

In all cases of failure to obtain a statement of real and personal property from any cause, the assessor of taxes shall ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof.  
[Acts 1925, S.B. 84.]

**Art. 7194. Land Office to Furnish Abstracts**

The Land Commissioner shall furnish to each assessor of taxes a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said commissioner shall furnish said assessors an additional list of all new valid surveys in his county during the year. If the records of the land office do not show the number of acres in a survey, the county surveyor shall furnish said assessor a certified statement of the number of acres therein.  
[Acts 1925, S.B. 84.]

**Art. 7195. Books Furnished Assessors**

Each commissioners court shall procure and furnish the assessor three well bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form:

Abstract No. .... Assessor's Abstract for .....  
Co. ....

PATENT						CERTIFICATE				
No.	Vol.	To Whom Issued	Date			Acres	No.	Class	Character	To Whom Issued
			Month	Day	Year					

  

RENDERED FOR TAXATION							
Year	By Whom Rendered	Acres	Value	Year	By Whom Rendered	Acres	Value

(A9610)

[Acts 1925, S.B. 84.]

**Art. 7196. How Filled by Assessor**

The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor.  
[Acts 1925, S.B. 84.]

**Art. 7197. Blocks and Lots in Cities**

Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or villages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners court of his county for that purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or



14. Value of telegraph and appurtenances in the county.
15. Number of horses and mules and value thereof.
16. Number of cattle and value thereof.
17. Number of jacks and jennets, and value thereof.
18. Number of sheep and value thereof.
19. Number of goats and value thereof.
20. Number of hogs and value thereof.
21. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
22. Number of sewing machines and knitting machines and the value thereof.
23. Number of clocks and watches and the value thereof.
24. Number of organs, melodeons, pianos, and all other musical instruments of whatsoever kind and value thereof.
25. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
26. Office furniture and the value thereof.
27. The value of gold and silver plate.
28. The value of diamonds and jewelry.
29. Every annuity or royalty, the description and value thereof.
30. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
31. The value of goods and merchandise of every description which such person is required to list as a merchant in hand on the first day of January of each year.
32. The value of material and manufactured articles which such person is required to list as a manufacturer.
33. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
34. Number of steam engines and boilers and value thereof.
35. The amount of moneys of bank, banker, broker, stock jobber or any other person.
36. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.
37. The amount and value of bonds and stocks other than United States bonds.
38. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.
39. The value of property of companies and corporations other than property hereinbefore enumerated.
40. The value of stock and furniture of hotels and eating houses.

41. Every franchise, the description and value thereof.

42. The value of all other property not enumerated as above.

[Acts 1925, S.B. 84.]

#### Art. 7205. Assessment of Property Not Rendered

If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:

1. The name of the owner; if unknown, say "unknown."
2. Abstract number and number of certificate.
3. Number of the survey.
4. Name of the original grantee.
5. Number of acres.
6. The true and full value thereof.
7. The number of lot or lots.
8. The number of the block.
9. The true and full value thereof.
10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof.

[Acts 1925, S.B. 84.]

#### Art. 7206. Boards of Equalization

Each commissioners court shall convene and sit as a board of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

2. They shall have power to correct errors in assessments.

3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors

for making up the general rolls, when said board shall meet again and approve the same if same be found correct.

5. Whenever said board shall find it their duty to raise the assessment of any person's property, they shall order the county clerk to give the person who rendered the same written notice that they desire to raise the value of same. They shall cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.

6. The assessors of taxes shall furnish said board on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath required by law, together with the assessment of said person's property made by him through other information; and said board shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved.

[Acts 1925, S.B. 84.]

**Art. 7207. Assessment of Real Property for Previous Years**

If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor unless he has ascertained by the certificate of the Comptroller the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it.

[Acts 1925, S.B. 84.]

**Art. 7208. Back Taxes on Personal Property**

If the assessor of taxes shall discover in his county any property, or outside of his county but belonging to a resident of the county, any personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof.

[Acts 1925, S.B. 84.]

**Art. 7209. Supplemental Roll**

Collectors of taxes of counties, cities and towns, when any taxpayer applies to them to ascertain the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall assess said taxpayer then and there, collect the

taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the Comptroller, three copies of such supplemental roll, one copy to be delivered to the Comptroller, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the commissioners court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the commissioners court, in like manner as upon the tax roll of the tax assessor. The oath shall be the same as is administered by tax assessors under existing law. The tax collector shall receive the following compensation for his services on all assessments made by him under this Act, to-wit: For assessing the State and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in Article 3937.

[Acts 1925, S.B. 84.]

**Art. 7210. Assessor to Follow Instructions**

Tax assessors in the execution of their duties shall use the forms and follow the instructions which the Comptroller shall from time to time prescribe, and furnished to them by the county judge in pursuance of law.

[Acts 1925, S.B. 84.]

**Art. 7211. Equalization of Assessments**

Hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January

First, 19\_\_\_\_ (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the property is rendered.

[Acts 1925, S.B. 84.]

#### Art. 7212. Boards May Equalize

(A). The Boards of Equalization shall have the power and it is made their official duty to supervise the assessment of their respective counties and if satisfied that the valuation of such property is not in accordance with the laws of the State to increase or diminish the same and to affix the proper valuation thereto as provided for in the preceding Article and when any assessor in this State shall have furnished the said Board with a rendition as provided for in the preceding Article it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property as the case may be by proper process, who shall testify under oath the character, quality, quantity of such property as well as the value thereof. Said court after hearing the evidence shall fix the value of such property in accordance with the evidence so introduced and as provided in the preceding Article and their action in such case or cases shall be final; provided, however, the Commissioners Court of any county may employ an individual, firm or corporation deemed to have special skill and experience to compile taxation data for its use while sitting as a Board of Equalization and to provide for the payment of the compensation for such professional services out of the proper fund or funds of the county.

(B). To pay any contractual obligation to be incurred for professional services under the provisions hereof, the Commissioners Courts are hereby authorized to issue time warrants payable from the general fund of the county in the manner provided by the Bond and Warrant Law of 1931; provided, however, that warrants so issued shall mature within six (6) years from their respective dates.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 726, ch. 453, § 1; Acts 1949, 51st Leg., p. 1196, ch. 607, § 1; Acts 1963, 58th Leg., p. 1256, ch. 481, § 1.]

#### Art. 7213. Neglect of Duty by Assessor

If any tax assessor in this State shall fail, refuse or neglect to place upon any rendition as provided in Article 7211 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed malfeasance on the

part of such officer, and shall be cause for his removal from office.

[Acts 1925, S.B. 84.]

#### Art. 7214. Oath of Assessor

Every tax assessor and deputy tax assessor in this State, in addition to the oath prescribed by the Constitution of this State, shall, before entering upon the duties of his office, take and subscribe to the following oath: "I, \_\_\_\_\_, tax assessor (or deputy tax assessor, as the case may be) in and for \_\_\_\_\_ County, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation, lying in said county, that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assessment sheet made up and sworn to by the said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the Constitution and laws of this State. So help me God." This oath shall be administered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be.

[Acts 1925, S.B. 84.]

#### Art. 7215. Oath of Board

When a commissioners court convenes as a board of equalization, before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: "I, \_\_\_\_\_, a member of the board of equalization of \_\_\_\_\_ County, for the year A.D. \_\_\_\_, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to

be less than its true market value, or, if it has no market value, then its real value; that I will faithfully endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, and if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value. I further solemnly swear that I have read and understand the provisions contained in the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the Constitution and laws of this State. So help me God." Said oath shall be filed and recorded in the commissioners court record as a part of the proceedings of that term of court.

[Acts 1925, S.B. 84.]

#### Art. 7216. Neglect of Duty Cause for Removal

If, in passing upon the value of any property by a commissioners court sitting as a board of equalization in this State, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or member of any commissioners court shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this State, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact is brought to the knowledge of the Attorney General that any tax assessor, deputy tax assessor, county judge, or member of the commissioners court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by or under the direction of the Attorney General.

[Acts 1925, S.B. 84.]

#### Art. 7217. To Furnish List of Delinquents

The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or qualify or to sign the oath as prescribed in

this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. Should any person so failing or refusing to take the oath prescribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath to the assessor of taxes, who shall present the said list to the next grand jury of his county.

[Acts 1925, S.B. 84.]

#### Art. 7218. To Submit Lists to Board

The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June or as soon thereafter as practicable, for their inspection, approval, correction or equalization. After said board shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his rolls<sup>1</sup> or books of all the real and personal property listed to him, in the form and manner prescribed by the Comptroller.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Should probably read "rolls."

#### Art. 7219. Shall Make Out Rolls in Triplicate

As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the Comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the Comptroller, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the Comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him.

[Acts 1925, S.B. 84.]

#### Art. 7220. Also Rolls of Unrendered Property

The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the Comptroller.

[Acts 1925, S.B. 84.]

#### Art. 7221. And Add Up Columns

The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he

shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns.  
[Acts 1925, S.B. 84.]

**Art. 7222. Return and Oath**

The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas,  
..... County.

I, ....., assessor of ..... county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in ..... county, so far as I have been able to ascertain the same; that I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in said books and the tabular statement returned is correct, as I verily believe.  
[Acts 1925, S.B. 84.]

**Art. 7223. Lists, etc., Filed**

The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public.  
[Acts 1925, S.B. 84.]

**Art. 7224. Rolls, How Distributed**

After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the Comptroller, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title.  
[Acts 1925, S.B. 84.]

**Art. 7225. Penalties for Neglect of Duty**

Should any assessor of taxes fail or neglect to make out and return his rolls or books to the com-

missioners court in the time and manner provided for in this chapter, it shall be competent for the commissioners court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commissioners court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the Comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the Comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work.  
[Acts 1925, S.B. 84.]

**Art. 7226. Lands of Non-Residents in Unorganized Counties, etc.**

Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the Comptroller in accordance with such regulations as he may adopt and establish for that purpose.  
[Acts 1925, S.B. 84.]

**Art. 7227. Canceling Subdivisions**

Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the commissioners court of the county wherein any such lands are located, for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivision shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been subdivided. When such application is so filed, said court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands

to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to any lands or lots included in an incorporated city or town.

[Acts 1925, S.B. 84.]

**Arts. 7228 to 7241. Repealed by Acts 1951, 52nd Leg., p. 361, ch. 226, § 1**

**Art. 7242. In New Counties**

When any county is created or organized, those in charge of the assessor's roll embracing the new county shall allow the person appointed by the commissioners court for such purpose access to the rolls to make the transcripts herein provided for. Such appointee shall make from such rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the new county formerly embraced within the unorganized county or the territory from which the new county was created, and shall receive such pay for his services as he may agree on with said court. The proper collector shall examine and verify said transcripts and attest their correctness over his official signature, and shall receive therefor twenty dollars from the new county, to be paid on the order of its commissioners court. Said collector shall also have the commissioners court of his county approve said transcripts, and shall deliver one of them to the collector of the new county, and forward the other to the Comptroller. On receipt of same the Comptroller shall be authorized to give proper credit to the collector of the old county and to charge the same to the collector of the new county. The collector of the new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of other counties.

[Acts 1925, S.B. 84.]

**Art. 7243. Assessment of Property Stored**

Any person, co-partnership, association or corporation doing business in this State as a warehouseman or operating or controlling a warehouse or place of storage, shall, upon demand of the tax assessor of the county in which said business is operated or in which property is so stored, on January 1st of each year, furnish to the said tax assessor, a list of the property so stored in such warehouse or place of storage, together with a list of the owners of such property and their residence. The term "place of storage" as used herein shall also include all cold storage or refrigeration plants wherein goods of any nature are stored. Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such list and

information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation.

[Acts 1925, S.B. 84.]

**Art. 7244. Mutual Life Insurance Companies**

For the purpose of State, county and city taxation, the amount of the reserve and contingency reserve of all mutual life insurance companies shall be treated as debts due by them to their policy-holders, and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves.

[Acts 1925, S.B. 84.]

**Art. 7244a. Valuation for Assessment of Intangible Personal Property of Trust Forming Part of Pension Plan, Profit-Sharing Plan, etc., of Employer**

All intangible personal property of any trust forming part of a pension plan, disability or death benefit plan, profit-sharing or stock bonus plan created or adopted by an employer for the exclusive benefit of some or all of the employees of such employer or their beneficiaries, to which contributions are made by such employer or by some or all such employees, or both, shall for the purposes of taxation be valued for assessment in this state in the following manner: From the total valuation of its assets shall be deducted the gross amount held for the satisfaction of liabilities to employees and their beneficiaries, to the extent that under the terms of the trust instrument it is impossible, at any time prior to the satisfaction of all such liabilities, for any part of the corpus or income to be used for or diverted to purposes other than for the exclusive benefit of such employees and their beneficiaries, and from the remainder shall be deducted the assessed value of all real estate and tangible personal property belonging to such trust and the remainder shall be the assessed taxable value of its intangible personal property. All real estate, furniture, fixtures and automobiles owned by any such trust shall be rendered for taxation in the city and county where such property is located. All other personal property owned by such trust shall be taxable only in the city and county where the principal business office of such employer is fixed by its charter.

[Acts 1967, 60th Leg., p. 429, ch. 194, § 1, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 429, ch. 194, § 2 declared an emergency and section 3 of the act was a severability provision.

**CHAPTER EIGHT. COLLECTION AND COLLECTOR**

Article

7245. Election and Term.

7246. Sheriff a Collector.

7246-½. Appointment of Assessor-Collector Following Election Adding Separate Office in County Under 10,000.

## Article

- 7246a. Officers Authorized to Administer Oath; Counties of 500,000 or More, Administering Oaths or Affidavits in; Fees; Receipts or Certificates, Fees for; "Tract" Defined.
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**Art. 7245. Election and Term**

In each county having ten thousand (10,000) or more inhabitants, to be determined by the preceding

Federal Census, there shall be elected at the regular biennial election an Assessor and Collector of Taxes, who shall hold his office for two (2) years. [Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 598, ch. 197, § 1.]

**Increase in Term of Office**

*Const. art. 8, § 16 was amended in November 1954 to increase the term of the office of Assessor and Collector of Taxes from two to four years.*

**Art. 7246. Sheriff a Collector**

In each county having less than ten thousand (10,000) inhabitants, the sheriff of such county shall be the Assessor and Collector of Taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon assessors and collectors; and he shall also give the same bonds required of an assessor and collector of taxes elected.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 598, ch. 197, § 2.]

**Art. 7246-1/2. Appointment of Assessor-Collector Following Election Adding Separate Office in County Under 10,000**

Where the separate office of assessor-collector of taxes is added to the list of authorized county offices in a county having less than 10,000 inhabitants by an election held pursuant to Article VIII, Section 16a, of the Texas Constitution, the commissioners court in its discretion may fill the office by appointment until an assessor-collector is elected at the next general election and qualifies for the office as required by law. Before entering upon the duties of the office, the appointee shall take the official oath and shall give bond in the manner prescribed by law for other assessor-collectors.

[Acts 1971, 62nd Leg., p. 74, ch. 39, § 1, eff. March 30, 1971.]

**Art. 7246a. Officers Authorized to Administer Oath; Counties of 500,000 or More, Administering Oaths or Affidavits in; Fees; Receipts or Certificates, Fees for; "Tract" Defined**

Sec. 1. The Assessor and Collector of Taxes, Sheriff or Sheriff and Assessor and Collector of Taxes, are hereby authorized and empowered to administer all oaths necessary for the discharge of the duties of their respective offices and to administer all oaths required for the transaction of the business of their respective offices, provided that in counties containing a population of five hundred thousand (500,000) or more inhabitants according to the last preceding or any future Federal Census, such Assessors and Collectors of Taxes and their Deputies are expressly authorized to administer oaths or affidavits as to the facts concerning the use

of any real property which may be claimed to be exempt in whole or in part from State taxation, as constituting a homestead under the Constitution of the State of Texas, and any oath or affidavit covering any bill of sale and application for transfer of a motor vehicle or trailer, or application for a certificate of title concerning any motor vehicle, or affidavit and application to register a rebuilt motor vehicle, or notice of the installation of a new or different motor in any motor vehicle, or affidavit concerning the weight of any motor vehicle, or affidavit with reference to the application for the registration of any light delivery truck, motor bus, semitrailer, or trailer, or application for the replacement of number plates, or affidavit as to the weight and application for the registration of a commercial farm truck, or affidavit and application for the reregistration of a motor vehicle that has not been used for the current registration year, when any such rendition, inventory, application, or instrument above mentioned is required to be filed in the office of such Assessor and Collector of Taxes, and any other instrument that may be filed in said office, or that may relate to the business or duties of said office whenever the same is or may be required by law to be sworn to, provided that such Assessor and Collector of Taxes shall charge and collect as a fee of office, in addition to any other fees that he may now be authorized by law to charge, in connection with such instruments, the sum of Twenty-five (25) Cents for each such oath or affidavit as he, or his Deputies, may administer, which shall be and constitute a fee of office, and for which he shall account as he is now or may hereafter be required by law to account for any other fee of office, such Assessors and Collectors of Taxes, and their Deputies, being hereby given the same right to administer all such oaths or affidavits as are notaries public under the laws of the State of Texas; provided no fee shall be charged for any oath or affidavit connected with the rendition of any property for taxation.

Sec. 2. Whenever any Assessor and Collector of Taxes in any county, containing a population of five hundred thousand (500,000) or more according to the last preceding or any future Federal Census, shall issue a receipt or certificate conformably to the terms of Article 7324 of the Revised Civil Statutes of the State of Texas, 1925, as amended by Chapter 117 of the Acts of the Regular Session of the Forty-second Legislature, which shall show that all taxes, interest, penalties, and costs have been paid on any tract of land, he shall charge and receive for each such certificate issued the sum of Fifty (50) Cents if the tract described therein be a part of an addition or subdivision covered by a plat recorded in the office of the County Clerk of his county, and One Dollar (\$1) for each such certificate so issued if the tract covered or affected by such receipt or certificate be not a part of an addition or subdivision covered by such recorded plat, all of which fees so received shall be treated and considered as fees of office and accounted for by such Assessor and Col-

lector of Taxes in such a manner as may now or hereafter be required by law and paid into the proper fund of his county, provided that the word "tract" as used herein shall include any parcel or number of parcels of land owned by any one owner in any one addition, subdivision, or survey, whether originally conveyed to such owner as one lot or more than one lot, or as one tract of land or more than one tract of land if the land covered by any such receipt or certificate as actually located on the ground constitutes one single tract of land capable of enclosure under a single fence running along all of its outer boundaries without crossing any street, alley, road, public thoroughfare, or the land of another owner. [Acts 1935, 44th Leg., p. 416, ch. 166, § 1; Acts 1941, 47th Leg., p. 532, ch. 328, § 1.]

**Art. 7246a-1. Officers' Salary Fund Laws Not Affected; Fees Paid Into Fund**

Nothing in this Act shall in any manner repeal or alter laws of this State relative to the officers' salary fund and any such fees collected under this Act shall be paid into such officers' salary fund. [Acts 1941, 47th Leg., p. 532, ch. 328, § 1a.]

**Art. 7247. Bond for State Taxes**

Each assessor and collector of taxes, within twenty (20) days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give bond based upon unencumbered real estate of the sureties, subject to execution, payable to the Governor and his successors in office, in a sum which shall be equal to five per cent (5%) of the net State Collections from Motor Vehicle Sales and Use Tax and Motor Vehicle registration fees during the twelve (12) month period ending August 31 immediately prior to the date the bond is given, provided said bond shall not exceed Fifty Thousand Dollars (\$50,000.00) nor be less than Twenty Five Hundred Dollars (\$2,500.00), with at least three (3) good and sufficient sureties, to be approved by the Commissioners Court of his county, which shall be further subject to the approval of the Comptroller, and his official oath together with said bonds shall be recorded in the office of the County Clerk of said County, and be forwarded by the County Judge of the county to the Comptroller, to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as assessor and collector of taxes for and during the full term for which he was elected or appointed. In the event the bonds required in this Article are executed by a satisfactory surety company or companies or by any private parties, as surety or sureties thereon in counties with a total taxable valuation of Thirty Million Dollars (\$30,000,000.00) or more, the county of which the principal in said bond or bonds is assessor and collector of taxes shall pay a reasonable amount as premium on said bond or bonds, which amount shall be paid out of the General Revenue of the county upon presentation of the bill therefor to the Commission-

ers Court of the county properly authenticated as required by law in other claims against the county. If there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any Court of competent jurisdiction.

Whenever the assessor and collector of taxes of any county is required to give a separate bond to cover district taxes collected by him, such bond shall be approved by the governing board, or commission, of such districts, and the premium on same shall be paid out of first collections for such districts.

[Acts 1925, S.B. 84; Acts 1932, 42nd Leg., 3rd C.S., p. 30, ch. 16; Acts 1933, 43rd Leg., p. 598, ch. 197, § 3; Acts 1973, 63rd Leg., p. 1299, ch. 489, § 1, eff. June 14, 1973.]

#### Art. 7248. New Bond

The assessor and collector of taxes may be required to furnish a new bond or additional security whenever, in the opinion of the Commissioners Court or the Comptroller, it may be advisable. Should any assessor and collector of taxes fail to give a new bond and additional security when required, he shall be suspended from office by the Commissioners Court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 598, ch. 197, § 4.]

#### Art. 7249. Bond of Assessor and Collector

The assessor and collector of taxes shall give a bond similar to that required of him by the State with like conditions to the County Judge of their respective counties and their successors in office in a sum not less than ten per cent (10%) of the whole amount of the county tax, as shown by the last preceding assessment, provided said bond shall not exceed Fifty Thousand Dollars (\$50,000.00), with at least three (3) good and sufficient sureties, to be approved by the Commissioners' Court of his county. A new bond and additional security may be required, and for failure to give such new bond or additional security, the Assessor and Collector of Taxes may be removed from office in the manner prescribed by law. In the event the bonds required in this Article are executed by a satisfactory surety company or companies or by any private party or parties as surety or sureties thereon in counties with a total taxable valuation of Thirty Million Dollars (\$30,000,000.00) or more the county of which the principal in said bond or bonds is Assessor and Collector of Taxes shall pay a reasonable amount as premium on said bond or bonds, which amount shall be paid out of the General Revenue of the county upon presentation of the bill therefor to the Commissioners' Court of the county properly authenticated as required by law in other claims against the county. If there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any Court of competent jurisdiction. [Acts 1934, 43rd Leg., 3rd C.S., p. 86, ch. 42, § 1.]

#### Art. 7249a. Weekly Payments by Tax Collector to County and State Treasurers

On Monday of each week each County Tax Collector shall pay over to the County Treasurer ninety per cent (90%) of all taxes collected for the County during the preceding week, and pay over to the State Treasurer ninety per cent (90%) of all taxes collected for the State during the preceding week.

The Commissioners' Court of any County, or the Comptroller of Public Accounts, may at any time in their discretion call upon the Tax Collector for a sworn statement as to the amount of his collections made during the current month, and for a report as to the amount of taxes in the County Depository belonging to the County or State, and direct that ninety per cent (90%) of those funds be transferred to the County or State Treasury. The Commissioners' Court or the Comptroller may at any time require a sworn report from the Depository as to the amount of funds in their hands under the control of the Tax Collector. Failure or refusal of a Tax Collector to make the remittances as provided in this Act within three (3) days from the date due, or to render the statements required herein, within three (3) days after receiving notice to do so, shall constitute a misdemeanor and shall be punished by a fine not to exceed Two Hundred Dollars (\$200.00).

[Acts 1932, 42nd Leg., 3rd C.S., p. 30, ch. 16, § 3.]

#### Art. 7250. Depository Shall Pay Treasurer

Except as to compensation due such tax collector as shown by his approved reports, tax money deposited in county depositories shall be paid by such depositories only to treasurers entitled to receive the same, on checks drawn by such tax collector in favor of such treasurer.

[Acts 1925, S.B. 84.]

#### Art. 7251. All Bonds to be First Approved

No collector shall enter upon the discharge of the duties of the office until all of the bonds required of him by law for the collection of any taxes, State, county or special, shall have been given and approved.

[Acts 1925, S.B. 84.]

#### Art. 7252. Deputies

Each Assessor and Collector of Taxes may appoint one or more deputies to assist him in the assessment and collection of taxes, and may require such bond from the person so appointed, as he deems necessary for his indemnity; and the Assessor and Collector of Taxes shall in all cases be liable and accountable for the proceedings and misconduct in office of his deputies; and the deputies appointed in accordance with the provisions of this Article shall do and perform all the duties imposed and required by law of Assessors and Collectors of Taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the Assessor and Collector of Taxes in person, provided, that in counties having a population of three hundred and fifty-five thousand

(355,000) or more according to the last preceding Federal Census, the Assessor and Collector of Taxes may in addition contract with special deputies having special technical training, skill, and experience for the purpose of assisting him in obtaining information upon which to base proper valuations of oil and mineral bearing lands and properties and interests therein, industrial and manufacturing plants, and other properties where special technical skill and training is required. In addition thereto, such special assistants, clerical, accounting, or stenographic, as may be necessary to conduct the organization herein provided for and to carry out the purposes of this Act may be applied for and appointed in like manner provided they shall be appointed only for purposes consistent with this Act. In addition thereto, the Assessor and Collector of Taxes shall be authorized to apply for the appointment of a special head of the automobile division of his office at a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum. The compensation to be paid such special deputies and special automobile department head shall be subject to the approval of the Commissioners Court and the County Auditor, and limitations upon the amount of such compensation elsewhere provided shall not apply. The contract of employment shall be for a definite term, not extending beyond the term of office of the Assessor and Collector, and shall be made upon sworn application to the Commissioners Court showing the necessity therefor, and shall be subject to approval both as to substance and as to form by the Commissioners Court and by the County Auditor.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 648, ch. 262, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 971, § 1.]

#### Art. 7253. Rolls to be a Warrant

When any tax collector shall have received the assessment rolls or books of the county, he shall receipt to the commissioners court for the same; and said rolls or books shall be full and sufficient authority for said collector to receive and collect the taxes therein levied.

[Acts 1925, S.B. 84.]

#### Art. 7254. Collector for All Taxes

The tax collector shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the State or county, school, poor house or other purposes; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 7255. Collections, When to Begin

Each Tax Collector shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books, or data upon which to proceed with the business; and, when so ordered by the Commissioners Court of his county, he may post up

notices—not less than three (3)—at public places in each voting or justice precinct in his county, at least twenty (20) days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid; and said Collector or his Deputy shall attend at such times and places for the purposes aforesaid, and shall remain at each place at least two (2) days. If the Collector from any cause shall fail to meet the taxpayers at the time and place specified in the first notice he shall in like manner give second notice. [Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 651, § 1.]

Art. 7255a. Repealed by Acts 1939, 46th Leg., p. 654, § 2

#### Art. 7255b. Discounts on Ad Valorem Taxes Paid in Advance

All taxpayers shall be allowed discounts for the payment of taxes due to the State and all governmental and political subdivisions and taxing districts of the State, said discounts to be allowed under the following conditions:

(a) three (3%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State, if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent;

(b) two (2%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid sixty (60) days before the date when they would otherwise become delinquent;

(c) one (1%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State, if such taxes are paid thirty (30) days before the date when they would otherwise become delinquent. Provided, however, that the provisions of this section shall not apply to water improvement districts, irrigation districts, levee districts, water control districts, and other governmental subdivisions, cities, towns and independent school districts unless and until the governing body of such water improvement districts, irrigation districts, levee districts, water control districts, and other governmental subdivisions, cities, towns, or independent school districts by ordinance, resolution or order, shall adopt the provisions hereof; and in the event any such water improvement district, irrigation district, levee district, water control district, and other governmental subdivisions, city, town or independent school district elects to allow such discounts, then the governing body of each water improvement district, irrigation district, levee district, water control district, and other governmental subdivisions, city, town or independent school district, shall have power, by the ordinance, resolution or order levying the annu-

al taxes, to designate the months in which such discounts of three (3%) per cent, two (2%) per cent, and one (1%) per cent respectively shall be allowed, but in no event shall the same apply to split payment of taxes.

[Acts 1939, 46th Leg., p. 654, § 1.]

**Art. 7256. Office at County Seat; (Deputy Assessors and Collectors of Taxes in Certain Towns and Cities; Bond; Compensation)**

Each Assessor and Collector of Taxes shall keep his office at the county seat of his county; and it shall be the duty of every person who failed to attend and to pay his taxes at the times and places in his precinct named by the Assessor and Collector of Taxes, as provided in the preceding Article, to call at the office of the Assessor and Collector of Taxes and pay the same before the last day of December of the same year for which the assessment is made; provided, however, that in all counties containing a city or town, other than the county seat, which has in excess of seven thousand (7,000) inhabitants according to the last Federal Census, said Assessor and Collector of Taxes, with the consent and approval of the Commissioners Court, may appoint a Deputy Assessor and Collector of Taxes in such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the county as the Assessor and Collector of Taxes and Commissioners Court of the county may require. The salaries of such deputies shall be fixed, determined, and paid, under the general laws of the State, in the same manner and from the same funds as are the salaries of deputy Assessors and Collectors of Taxes whose duties are performed at the county seat. The Assessor and Collector of Taxes shall remain liable on his bonds for all taxes collected by such Deputy and nothing herein shall be construed as a limitation on the liability of the bonds of either the Assessor and Collector of Taxes or such Deputy. Provided further that in all counties having a population of more than seventy thousand (70,000) inhabitants, according to the last preceding Federal Census, and containing one or more cities or towns, other than the county seat, each of which has in excess of one thousand (1,000) inhabitants, according to the last Federal Census, said Assessor and Collector of Taxes with the consent and approval of the Commissioners Court may appoint a Deputy Assessor and Collector of Taxes in each such city or town, who shall have the right to collect taxes from all persons who desire to pay taxes to him and to issue a valid receipt therefor; each such Deputy shall enter into such bond, payable to the County Judge of the county as the Assessor and Collector of Taxes and Commissioners Court of the county may require. The salary of each such Deputy Assessor and Collector of Taxes shall be fixed by the Commissioners Court, and each such Deputy Assessor and Collector of Taxes shall be subject to all the terms and provi-

sions of the law relating to Deputy Assessors and Collectors of Taxes, providing that the salaries fixed by the Commissioners Court for such deputies provided for herein, in such counties, shall not exceed Two Hundred Dollars (\$200) annually for each one thousand (1,000) population, according to the last preceding Federal Census, in each of such cities or towns, and further provided that the salary of either of such Deputy Assessor and Collector of Taxes shall not exceed One Thousand, Two Hundred Dollars (\$1,200) per year. The Assessor and Collector of Taxes shall remain liable on his bonds for all taxes collected by such Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Assessor and Collector of Taxes or such Deputy.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., 1st C.S., p. 50, ch. 16, § 1; Acts 1937, 45th Leg., p. 149, ch. 80, § 1; Acts 1945, 49th Leg., p. 586, ch. 345, § 1.]

**Art. 7257. Tax Receipt**

The Tax Assessor and Collector or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State, county and district taxes, and the year or years for which such tax was assessed; said receipt shall also show the number of acres of land in each separate tract, number, abstract and name of original grantee and any city or town lot and name of city or town, and total value of all property assessed. Said receipt shall have a duplicate to be retained by the Assessor and Collector. The Assessor and Collector shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words "Assessor and Collector of Taxes, \_\_\_\_\_ County" (the blank to be filled with the name of the county), and shall impress said seal on each receipt and duplicate given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in the same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. The Assessor and Collector, when any taxes are paid, shall credit same on the rolls in the manner and form prescribed by the Comptroller of the State of Texas; and such entry shall be notice to all the world of the payment of such tax, and such entries may be used in evidence on issues involving the payment of same. [Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 671, ch. 284, § 1.]

**Art. 7258. Recording Tax Receipts**

Every receipt for the payment of taxes on property, real, personal or mixed, hereafter paid, as well as those heretofore paid, collected by State, county or municipal officers, may be recorded in the office of the county clerk of the county where the property is situated. On presentation of a tax receipt to the county clerk he shall immediately file the same in the same manner of filing a deed to land, and enter and record such receipt in full in a record book kept

by him for the purpose of recording tax receipts, to be called "Tax Receipt Record," and shall have the name and number written thereon, and such record shall be notice to all the world of the payment of such tax, and certified copies thereof may be used in evidence on issues involving the same under like rules admitting certified copies of deeds in evidence. [Acts 1925, S.B. 84.]

**Art. 7258a. Repealed by Acts 1969, 61st Leg., p. 1044, ch. 339, § 7, eff. May. 27, 1969**

The repealed article, derived from Acts 1929, 41st Leg., 2nd C.S., p. 153, ch. 77; Acts 1953, 53rd Leg., p. 1052, ch. 436, § 1, read:

"Sec. 1. On and after October 1, 1953, the Tax Collector or his deputy of any county in this State, or any city or political subdivision or tax assessing district within any such county shall, upon request, issue a certificate showing the amount of taxes, interest, penalty and costs due, if any, on the property described in said certificate. A charge of not to exceed One Dollar (\$1) may be made for each such certificate issued. When any certificate so issued shows all taxes, interest, penalty and costs on the property therein described to be paid in full to and including the year therein stated, the said certificate shall be conclusive evidence of the full payment of all taxes, interest, penalty and costs due on the property described in said certificate for all years to and including the year stated therein. Said certificate showing all taxes paid shall be admissible in evidence on the trial of any case involving taxes for any year or years covered by such certificate, and the introduction of the same shall be conclusive proof of the payment in full of all taxes, interest, penalty and costs covered by the same.

"Sec. 1(a). The provisions of this Act shall be applicable only in suits where the State of Texas or any political subdivision thereof sues for unpaid taxes. Such certificate shall not be conclusive in suits in which the title for land is involved in any manner in suits between private citizens.

"Sec. 2. If any such certificate is issued or secured through fraud or collusion, the same shall be void and of no force and effect, and any such Tax Collector or his deputy shall be liable upon his official bond for any loss resulting to any such County or city or political subdivision or tax assessing district or the State of Texas, through the fraudulent or collusive or negligent issuance of any such certificate."

See, now, article 7258b.

**Art. 7258b. Tax Certificate; Cancellation Certificate; Evidence**

Sec. 1. The tax collector or his deputy of any county in this state, or of any city or political subdivision or tax assessing district within any such county shall, upon request, issue a certificate showing the amount of taxes, interest, penalty and costs due, if any, on the property described in said certificate. This certificate shall contain a certification by

the tax collector that he has checked each delinquent tax report, supplemental delinquent tax record and recompiled delinquent tax report from the last tax cancellation date, or to the extent of his records, up to and including the records in present use. A charge of not to exceed \$2 may be made for each such certificate issued.

Sec. 2. (a) When any such certificate so issued shows all taxes, interest, penalty and costs on the property therein described to be paid in full to and including the year therein stated, the said certificate shall be conclusive evidence of the full payment of all taxes, interest, penalty, and costs due on the property described in said certificate for all years to and including the year stated therein. Said certificate showing all taxes paid shall be admissible in evidence on the trial of any case involving taxes for any year or years covered by such certificate, and the introduction of the same shall be conclusive proof of the payment in full of all taxes, interest, penalty, and costs covered by the same.

(b) The provisions of this Act shall be applicable only in suits where the State of Texas or any political subdivision thereof sues for unpaid taxes. Such certificate shall not be conclusive in suits in which the title for land is involved in any manner in suits between private citizens.

Sec. 3. In the event a tax certificate is issued showing no taxes, interest, penalty, and costs due, when in fact taxes, interest, or penalties were due, and the owner of the land is not that person under whom the taxes, interest, penalty, and costs became delinquent, the tax collector may issue, on request, a certificate relieving the property from liability and stipulating that the delinquent taxes, interest, penalty, and costs are thereafter the personal liability of the person under whom the taxes became delinquent. This cancellation certificate plus a copy of the tax certificate and an affidavit stating that an error was made and that no fraud or collusion existed shall be submitted to the commissioners court. Thereafter, this cancellation certificate shall be conclusive proof for all purposes that neither the land nor the present owner is liable for the delinquent taxes, interest, penalty, and costs.

Sec. 4. If either a tax certificate or a cancellation certificate is issued or secured through fraud or collusion, the same shall be void and of no force and effect, and any such tax collector or his deputy shall be liable on his official bond for any loss resulting to any such county or city or political subdivision or tax assessing district or the State of Texas, through the fraudulent or collusive or negligent issuance of any such certificate.

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application,

and to this end the provisions of this Act are declared to be severable.

Sec. 6. This Act does not apply to litigation pending as of the effective date of this Act.

Sec. 7. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. Chapter 77, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 7258a, Vernon's Texas Civil Statutes), is specifically repealed.

[Acts 1969, 61st Leg., p. 1044, ch. 339, eff. May 27, 1969.]

#### Art. 7259. Record Books Furnished

Each commissioners court shall furnish the county clerk tax receipt record books which may be made in form as books for recording deeds or in form with printed blanks conforming to the form of the tax receipts as provided by law for tax collectors, or in any form suitable to the purposes of this law, in the discretion of said court, with the name "Tax Receipt Record" indorsed on the same, with successive numbers on each separate volume, and said clerk shall properly index said record alphabetically in the name of the holder of the tax receipt.

[Acts 1925, S.B. 84.]

#### Art. 7260. Monthly Reports

1. At the end of each month the Tax Collector shall, on forms to be furnished by the Comptroller, make an itemized report under oath to the Comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all State taxes collected, provided that said itemized reports for the months of December and January of each year may not be made for twenty-five (25) days after the end of such months if same cannot be completed by the end of such respective months.

2. He shall present such report, together with the tax receipt stubs to the County Clerk, who shall within two (2) days compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, he shall certify to its correctness, for which examination and certificate said Clerk shall be paid by the Commissioners Court twenty-five (25) cents for each certificate and twenty-five (25) cents for each two hundred (200) taxpayers on said report; provided that in counties having a County Auditor the work mentioned in this paragraph shall be done by the County Auditor rather than the County Clerk.

3. The Tax Collector shall then immediately forward his reports so certified to the Comptroller, and shall pay over to the State Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected, and to enable him to do so, he may, at his own risk, send the same to the

State Treasurer at the least cost to the State, on which he shall be allowed credit by the Comptroller upon filing receipt showing actual amount of exchange paid. The Tax Collector may, in making remittance of funds to the State Treasurer or any other State officer, board, commission or employe of the State, make the same by sending cash or a check on the county depository, if the funds are in the county depository, or if the same, in due course, are required to be in such depository. No State or County funds shall be used to pay exchange on, or expense of transmitting or collecting money by, any check or exchange or draft which may be used to make any such remittances. If such funds are sent in cash, by registered letter, by Post Office Money Order, express money order or by bank draft or bank check or depository check, in such event the liability of the persons sending the same shall not cease until the same money is actually received by the State Treasurer or the duly authorized State depository or other authorized officer in due course of business. The State Treasurer, whenever he may receive a remittance from a Tax Collector, shall promptly pay the money so remitted to the State Treasury, on the deposit warrant of the Comptroller, and the money when so deposited shall be a credit to the said Tax Collector.

4. The Tax Collector shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the Comptroller on or before the first day of May of each year, and to enable him to do so, the Commissioners Court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance to a Tax Collector of credit for the unpaid taxes shown on his delinquent and insolvent lists prepared under Articles 7263 and 7336 shall not absolve any taxpayer or property appearing upon either of said lists from liability for and payment of such taxes, nor absolve the Tax Collector from the duty of collecting same, and the provisions of Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274 and 7336 pertaining to the levy upon and seizure and sale by the Tax Collector of personal property to enforce the payment of taxes shall be applicable to the enforced collection of such taxes. As such taxes are collected, the Tax Collector shall issue special tax receipts therefor to be furnished by the Comptroller, which blank receipts shall be numbered and charged to the Tax Collector, who shall account for same at his next annual settlement in the same manner as occupation tax receipts. The Tax Collector shall make in triplicate itemized monthly reports of all such collections, using blanks for that purpose furnished by the Comptroller. One of said triplicates shall be retained by the Tax Collector as a record of his office, one shall be filed with and preserved by the County Clerk as a record of his office, and one shall be sent to the Comptroller and preserved as a record of his office. There shall be entered upon or attached to each copy of said

reports the affidavit of the Tax Collector that he has fully complied with and exhausted all resources authorized and provided by law for the seizure and sale of personal property for the collection of all unpaid taxes shown upon the delinquent and insolvent lists of his county, and that he does not know of any personal property belonging to any person or persons against whom such taxes remain unpaid that he is authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof.

6. The Comptroller shall prescribe and furnish the forms to be used by the Collector of Taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. He shall enforce a strict observance of each provision of these articles.

7. The Comptroller shall notify the District Attorney of the district or the County Attorney of the county in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any provisions of this article.

8. The Tax Collector shall be entitled to deduct amounts of double payments and homestead exemptions claimed, if paid in error in prior months of the current tax year, from the amounts of taxes due the State of Texas; and same shall be by him refunded to claimants; and the State Comptroller shall honor such deductions the same as if made in the month in which the payment was actually made, so long as such deductions are made prior to June 30th of the year when current taxpaying ends.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 673, ch. 285, § 1; Acts 1961, 57th Leg., p. 27, ch. 17, § 1.]

Section 2 of the Act of 1961 provided: "This law is to be cumulative with all other provisions of Article 7260, except insofar as they conflict with remittances of these particular collections to the State, and the approval by the Comptroller."

#### Art. 7261. Duties of Clerk and Collector

1. The Tax Collector shall at the end of each month make like reports to the Commissioners Court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the State. The County Clerk shall likewise, within two (2) days after the presentation of said report by the Collector, examine said report and stubs and certify to their correctness as regards names, dates, and amounts; for which examination and certificate he shall be paid by the Collector Fifty (50) Cents each month, which amount shall be allowed to the Collector by the Commissioners Court; provided that in counties having a County Auditor the work mentioned in this paragraph shall be done by the County Auditor rather than the County Clerk.

2. The Clerk shall file said report intended for the Commissioners Court, together with the tax receipt stubs, in his office for the next regular meeting of the Commissioners Court.

3. The Tax Collector shall immediately pay over to the County Treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the County Clerk.

4. At the next regular meeting of the Commissioners Court, the Tax Collector shall appear before said Court and make a summarized statement, showing the disposition of all moneys, both of the State and county, collected by him during the previous three (3) months. Said statement must show that all taxes due the State have been promptly remitted to the State Treasury at the end of each month, and all taxes due the county have been paid over promptly to the County Treasurer and shall file proper vouchers and receipts showing same.

5. The Commissioners Court shall examine such statement and vouchers, together with an itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the Tax Collector has properly accounted for all taxes collected, as provided above, the Commissioners Court shall enter an order approving said report, and the order approving same shall be recorded in the minutes.

6. The Tax Collector shall finally adjust and settle his account with the Commissioners Court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing Article in his settlement with the State.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1326, ch. 491, § 1.]

#### Art. 7262. Report Not Approved, Unless

If any tax collector shall have failed at the end of each month, or within three days thereof, to promptly remit to the State Treasurer the amount due by him to the State, or pay over to the county treasurer the amount due by him to the county, the commissioners court, at the next regular meeting, shall ascertain the facts; and if the tax collector fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the State and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in Articles 7294 and 7295, and notify such collector, as is provided for in Article 7296 under penalty for failure to do so. Whenever the tax collector shall fail or refuse to remit to the State Treasurer the amounts due the State, when requested, the Comptroller shall notify him.

[Acts 1925, S.B. 84.]

#### Art. 7263. List of Delinquents and Insolvents

The tax collector shall make out on forms to be furnished for that purpose by the Comptroller, between April first and the fifteenth of each year, list of delinquent or insolvent taxpayers, the caption of

which shall be, the "list of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the courthouse door of the county, and one list at the courthouse door, or where court is usually held, in each justice precinct in his county; and the tax collector, upon the certificate of the commissioners court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners court, as above provided for.

[Acts 1925, S.B. 84.]

#### Art. 7264. To Collect Delinquent List

The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but the collector shall use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same.

[Acts 1925, S.B. 84.]

#### Art. 7264a. Adjustment of Delinquent Taxes and Collection Thereof

Sec. 1. It is hereby declared the Policy of the State to adjust delinquent taxes, correct errors, to eliminate conflicts in surveys of land, and to collect the delinquent, occupation, franchise and Ad Valorem Taxes, in order to clear this State of such taxes, errors and conflicts at the earliest date possible, and to provide a system for assessors, in order to eliminate the numerous errors that now appear on the tax rolls each recurring year.

Sec. 2. Cost of collecting delinquent taxes shall not exceed the amount of the penalty and interest, or an amount equal to such penalty and interest of all delinquent taxes collected. Any county desiring to install a tax or plat system and clear the county of errors, conflicts and unknown owners, may do so by paying not to exceed 15% of the delinquent taxes collected, which payment shall cover the cost of records and installing same.

Sec. 3. In order to speedily carry out the provisions of this Act, the State Comptroller and the Commissioners' Court of each of the several counties may employ competent persons to do the work and to furnish the Comptroller and the Commissioners' Courts all cases where adjustment is necessary; and in all such cases the Commissioners' Court shall make proper settlement or adjustment.

Sec. 4. This Act is not intended to change any law now in effect regarding the collection of delinquent taxes, but to be an aid to the officials in the discharge of their duties, and when the delinquent taxes in a county are adjusted, corrected and collected, the Comptroller shall take necessary steps to see that all delinquent taxes are collected within a reasonable time after they become delinquent, in order to avoid the necessity of again employing additional help.

[Acts 1931, 42nd Leg., p. 383, ch. 229.]

#### Art. 7264b. Repealed by Acts 1951, 52nd Leg., p. 313, ch. 189, § 1

#### Art. 7265. Non-Residents

Non-residents of counties, owing State or county taxes, are hereby authorized to pay the same to the Comptroller; provided, that all taxes due by said non-residents shall be paid at the Comptroller's office on or before the first day of January next after the assessment of such taxes. The tax collectors shall be entitled to the commissions on all moneys paid by non-residents to the Comptroller, due their counties respectively.

[Acts 1925, S.B. 84.]

#### Art. 7266. Forced Collections to Begin

If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the Comptroller, the tax collector shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the Comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the tax collector by the Comptroller. The Comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the Comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes.

[Acts 1925, S.B. 84.]

#### Art. 7267. Personal Property Pointed Out

If any person shall point out to the tax collector sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property.

[Acts 1925, S.B. 84.]

#### Art. 7268. Property About to be Removed

If it comes to the knowledge of the tax collector that any personal property assessed for taxes on the

rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes unless the owner of such property shall give bond, with sufficient security payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. [Acts 1925, S.B. 84.]

#### Art. 7269. Tax Lien Superior

In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachments or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or property, or against any of his estate remain unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness. Such unpaid taxes shall be paid by the assignee, when said property has been seized by the sheriff, out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found.

[Acts 1925, S.B. 84.]

#### Art. 7270. Execution in Other Counties

Whenever it shall appear to any tax collector that any person who is delinquent in the payment of his or her taxes has no property in his county out of which said amount of taxes can be collected, such collector shall make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and forward the same to the tax collector of any county or counties where he shall have reason to believe said delinquent has property of any description, and if said property is in any of the unorganized counties of this State, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. [Acts 1925, S.B. 84.]

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#### Art. 7271. Credit for Delinquent Taxes

The provisions of this chapter pertaining to the duty of tax collectors in the matter of the collection of delinquent and insolvent taxes shall apply as well to taxes owing by persons who own real property as to those who do not own real property, and no tax collector in this State shall be entitled to or be allowed either by the county or by the Comptroller credit as approved by Article 7263 for any taxes reported or returned as either delinquent or insolvent under Article 7263 or 7336 until he makes affidavit entered upon or attached to both his lists of insolvent taxpayers prepared under said Article 7263 and his lists of delinquent lands prepared under Article 7336, that said lists are true and correct and that he has fully complied with and exhausted all resources to collect such taxes as authorized and required by Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336, and does not know of, and has made diligent inquiry and has been unable to learn of, any personal property belonging to any person or persons against whom such taxes are shown on said lists to be unpaid that he was authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof, nor until the commissioners court of his county, after full consideration and investigation, has entered upon or attached to both the insolvent lists and lists of delinquent lands the certificate required by said Article 7263, and no compensation that at the time, or at any time thereafter, may be due or owing to the tax collector, either by the State or county, shall be retained by or paid to the tax collector until he has made the affidavits as provided by this article. Nothing in this article is intended or shall be construed as requiring any tax collector to levy upon and sell real property for the purpose of enforcing the payment of such taxes.

[Acts 1925, S.B. 84.]

#### Art. 7272. All Property Liable for Taxes

All real and personal property held or owned by any person in this State shall be liable for all State and County Taxes due by the owner thereof, including tax on real estate, personal property and poll tax; and the Tax Collector shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding; provided, however, that any person, including a lienholder, having an interest in property against which there are taxes which has been included in an assessment with other property may pay the proportionate part of the taxes against his property without being required to pay any other taxes included in the assessment. If the parties at interest cannot agree with the Tax Collector upon the amount of taxes to be apportioned to each piece of property then the Commissioners' Court shall make a fair apportionment of the taxes, and the payment of the taxes on a part of the property according to such apportionment will relieve it from liability for the payment of any of the other taxes included in the assessment; and further providing,

however, that the provision herein, whereby the taxes against a piece of property may be apportioned, shall apply to taxes due any district, municipality or other subdivision of the State, and in the event the parties at interest cannot agree to an apportionment of the taxes then the Board of Commissioners having authority over the assessment and equalization of such taxes, shall make the apportionment in the manner herein provided.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 237, ch. 141, § 1.]

#### Art. 7273. Sales of Personal Property

In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the courthouse door, and at two other public places in the county; and such sale shall take place at the courthouse door of the county in which the assessment is made, by public auction.

[Acts 1925, S.B. 84.]

#### Art. 7274. If Property is Insufficient

If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale, and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner.

[Acts 1925, S.B. 84.]

#### Art. 7275. Sales of Real Property

If the delinquent is not possessed of a sufficiency of personal property in the county subject to seizure and sale to satisfy all taxes due by him, the tax collector shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and sell the same in accordance with the provisions of the succeeding article.

[Acts 1925, S.B. 84.]

#### Art. 7276. Advertisement of Real Property for Sale

In making sales of real property for taxes, the Collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation the legal rate of Two (2) Cents per word for the first insertion of such publication and One Cent per word for each subsequent insertion or such newspaper shall be entitled to charge for such publication at a rate equal to but not

in excess of the lowest published word or line rate of that newspaper for classified advertising, and such fee shall be taxed as other costs of sale against such land, and the Comptroller shall allow the Collector such fee to be paid by the Collector to the newspaper publisher in each case where the land is bid in and sold to the State. If there be no newspaper published in the county, or, there being a newspaper published in the county and the publisher thereof refuses to publish the advertisement at the price herein fixed, then the advertisement shall be made by posting the same for thirty (30) days previous to the day of sale, at the courthouse door and three other public places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner if known, and if unknown say "unknown," together with the time, place, and terms of sale; said sale to be for cash, to the highest bidder, at public outcry at the courthouse door, and between legal hours, on the first Tuesday of the month.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 480, ch. 303, § 4.]

#### Art. 7277. List Posted

Prior to the sale of any real property for taxes in any county in this State, the tax collector shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: one copy at the courthouse door of the county, and a copy at two other public places in the county where the lands or lots are situated.

[Acts 1925, S.B. 84.]

#### Art. 7278. Sale Continued

As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the tax collector shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not made before the completion of the tax sales, the collector shall re-sell the property, and continue such sale until the same is complete.

[Acts 1925, S.B. 84.]

#### Art. 7279. Homesteads Liable

No real estate set apart, used or designated as a homestead shall be sold for taxes other than the taxes due on such homestead.

[Acts 1925, S.B. 84.]

#### Art. 7280. Sales of Land

The tax collector, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder, who will pay the taxes and

penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable.  
[Acts 1925, S.B. 84.]

#### Art. 7281. Tax Deed

The tax collector shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and the cost and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as provided by law, which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for taxes was made, provided the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold, he shall convey, subject to the right of redemption provided for in Article 7283, all the right and interest which the former owner had therein at the time when the assessment was made.  
[Acts 1925, S.B. 84.]

#### Art. 7282. Sales Reported

When the collector shall have made sale of any real estate under this chapter, he shall make immediate return of said sale to the commissioners court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court.  
[Acts 1925, S.B. 84.]

#### Art. 7283. Redemption

The owner of the real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two (2) years after the date of filing for record of the purchasers deed, have the right to redeem the land on the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including One Dollar (\$1.00) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon plus ten per cent (10%) of the aggregate total.

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including One Dollar

(\$1.00) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon plus twenty per cent (20%) of the aggregate total.

Provided, that, subject to the owner's right to redeem as aforesaid, any lien holder or party interested may within the time above specified redeem said property under the same provisions.

Sec. 2. This Act is intended to apply to and govern the amount necessary to be paid for redemption from all State, County, municipal and/or district tax sales of real estate heretofore or hereafter made regardless of the legal method used in making such sales.

Sec. 3. In addition to redeeming direct from the purchaser, redemption may also be made as provided in Articles 7284 and 7285 of the Revised Civil Statutes of Texas of 1925.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., 1st C.S., p. 91, ch. 31, § 1.]

#### Art. 7284. Redemption From Private Purchasers

Any person having the right to redeem any land sold at a tax sale may do so by payment, within the time prescribed by law, to the tax collector of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser cannot agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes.

[Acts 1925, S.B. 84.]

#### Art. 7284a. Redemption From District Tax Sales

Whenever land is sold under a decree and judgment of Court for taxes levied by or for any district organized under the laws of the State of Texas with authority to levy and collect taxes, the owner of such property, or any one having an interest therein, shall have the right to redeem the same at any time within two years from the date of such sale upon payment of double the amount paid by the purchaser at such sale; provided, that the purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of such sale.

[Acts 1927, 40th Leg., p. 25, ch. 20, § 1; Acts 1927, 40th Leg., 1st C.S., p. 195, ch. 69, § 1.]

#### Art. 7284b. Redemption From State or County Tax Sales

Whenever land is sold under a decree and judgment of court for taxes levied by or for the State, or

by or for any County within the State, the owner of such property, or any one having an interest therein, shall have the right to redeem the same at any time within two years from the date of such sale upon payment of double the amount paid by the purchaser at such sale; provided that the purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of such sale.

[Acts 1927, 40th Leg., 1st C.S., p. 195, ch. 70, § 1.]

#### Art. 7285. Receipt of Collector, Notice When

Each tax collector to whom payment is made under the provisions of this chapter shall give a receipt therefor, signed by him officially in the presence of two witnesses; which receipt when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and said collector shall on demand pay over to the purchaser at said tax sale the money thus received by him.

[Acts 1925, S.B. 84.]

#### Art. 7286. Relief, When

Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements herein indicated. If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the State, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated an affidavit to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that the said tax has been cancelled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to all such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous, he shall be entitled to the warrant of the Comptroller for the amount so paid in the same manner as is provided in Article 7287 of this chapter, in cases of redemption from individual purchasers. The tax collector shall make no charge whatever for the duties herein mentioned.

[Acts 1925, S.B. 84.]

#### Art. 7287. Certificate of Redemption

When the owner of such lands shall have redeemed the same from a private purchaser, the tax collector shall furnish him a certificate to that effect; and upon presentment of said certificate to the

Comptroller, the Comptroller shall issue to him a warrant upon the State Treasury for the amount of such tax. This warrant shall be receivable for all taxes to the State. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents to be paid by the applicant.

[Acts 1925, S.B. 84.]

#### Art. 7288. Lands to be Bid in for State

Should the tax collector fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the State for the taxes and penalties due, and all costs accruing thereon, and execute a deed to the State; and one deed shall include all tracts of land bid off to the State at such tax sale, and make due return thereof, under such forms and directions as the Comptroller may furnish and direct. After sale and purchase by the State of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the State. Said collector shall, on final settlement of his accounts with the commissioners court and the Comptroller, be entitled to a credit for the amount of taxes due the State and county, respectively, for which the lands and lots were bid off to the State.

[Acts 1925, S.B. 84.]

#### Art. 7289. May Redeem

The owner of any lands that may have been conveyed to the State under the provisions of the foregoing article, or his agent, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the State; and such collector shall execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the Comptroller, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land.

[Acts 1925, S.B. 84.]

#### Art. 7290. If Not Redeemed

In case said land shall not have been redeemed as provided in Article 7289, then the same may be sold as provided in Article 7288.

[Acts 1925, S.B. 84.]

#### Art. 7291. May Redeem by Paying Costs

The owner of real estate which has been bought in by the State for taxes, or his heirs or assigns, may redeem the same at any time prior to the sale thereof; by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the

amount designated by the Comptroller as due thereon with costs of advertisement; and if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall upon the payment of the amount that may be due thereon, cancel such sale; and deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been cancelled; which certificate shall release the interest of the State and the same may be recorded in the proper county as other conveyances of real estate are recorded.

[Acts 1925, S.B. 84.]

#### Art. 7292. Board of Inquiry

Each commissioners court shall, at the regular terms of said courts sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the State for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said court shall issue to said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon presentation of said certificate to the Comptroller, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the State may have acquired in and to said land by reason of such tax sale.

[Acts 1925, S.B. 84.]

#### Art. 7293. Lands of Non-Residents in Unorganized Counties

The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the Comptroller, under such regulations as he may adopt for that purpose.

[Acts 1925, S.B. 84.]

#### Art. 7294. Payment of State Moneys

All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller; provided that tax collectors shall have thirty days from the date of such direction within which to comply with the same.

[Acts 1925, S.B. 84.]

#### Art. 7294a. Unconstitutional

This article derived from Acts 1939, 46th Leg., p. 668, attempting to donate for period of five years to various counties of the state one-half of state ad valorem taxes collected for general revenue purposes upon property and from persons in such county, was invalid under Const. art. 8, § 6, prohibiting

Legislature from making an appropriation for a longer term than two years. See *Dallas County v. McCombs* (1940) 135 T. 272, 140 S.W.2d 1109.

#### Art. 7294b. Unconstitutional

This article derived from Acts 1939, 46th Leg., Spec.L., p. 987, donating to enumerated counties the state ad valorem taxes necessary to reimburse such counties for tax losses sustained because of purchase of lands therein by federal government, was invalid under Const. art. 8, § 6, as attempting to make appropriations of state moneys for a longer period than two years, and as making appropriations which are not specific. See *State v. Angelina County* (1941) 136 T. 247, 150 S.W.2d 379.

#### Art. 7295. Payment of Other Money

All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers whenever and as often as they may be directed to do so by the respective county judges, or county commissioners courts or mayor or board of aldermen; provided that tax collectors shall have ten days from the date of such direction within which to comply with the same.

[Acts 1925, S.B. 84.]

#### Art. 7296. Notification to Pay

The notification and direction provided for in the two preceding articles may be verbal, written or by telegram; and if written or by telegram, proof of the deposit in the post office or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given.

[Acts 1925, S.B. 84.]

#### Art. 7297. Duty to Sue

The district or county attorney of the respective counties of this State, by order of the commissioners court, shall institute suit in the name of the State for recovery of all money due the State and county as taxes due and unpaid on unrendered personal property; and in all suits where judgments are obtained under this law, the person owning the property on which there are taxes due the State and county shall be liable for all costs. The State and county shall be exempt from liability for any costs growing out of such action. All suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation. No suit shall be brought until after demand is made by the collector for taxes due, and no suit shall be brought for an amount less than twenty-five dollars. Such suits may be brought for all taxes so due and unpaid for which such delinquent taxpayer may be in arrears for and since the year 1886.

[Acts 1925, S.B. 84.]

#### Art. 7298. Limitation Not Available

No delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any

Statute of Limitation by way of defense against the payment of taxes due from him or her to the State, or any county, city, town, Navigation District, Drainage District, Road District, Levee Improvement District, Reclamation District, Irrigation District, Water Improvement District, Water Control and Improvement District, Water Control and Preservation District, Fresh Water Supply District, School District or other taxing authority; provided that this law shall not apply to collection of delinquent school taxes assessed prior to July 1, 1941; and provided further that no suit shall be brought for the collection of delinquent personal property taxes of any taxing authority unless instituted within four (4) years from the time the same shall become delinquent.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., 2nd C.S., p. 161, ch. 81, § 1; Acts 1931, 42nd Leg., p. 419, ch. 252, § 1; Acts 1951, 52nd Leg., p. 244, ch. 142, § 1; Acts 1953, 53rd Leg., p. 1045, ch. 432, § 1.]

*Acts 1971, 62nd Leg., p. 2858, ch. 937, §§ 1 to 3, classified as Article 7329a, provided for a deferral of delinquent tax collections on homesteads owned by persons 65 or older. Section 4 thereof provided that if this Act be in conflict with any part or portion of Article 7298, the terms and provisions of this Act shall govern.*

**Art. 7298a. Professional Conferences or Legal Institutes; Attendance; Payment of Expenses**

Sec. 1. The Assessor-Collector of Taxes of each county and the Sheriff who also performs the duties of Assessor-Collector of Taxes in certain counties, may attend one professional conference or legal institute each year, as may be called by the State Comptroller of Public Accounts, in order that the Assessor-Collector or the Sheriff, as the case may be, may be apprised of the changes in the tax laws, the court decisions and the Attorney General's opinions in connection therewith, and the policy of the Comptroller's office and the other state agencies concerning the assessing and collecting of county and state taxes. The Assessor-Collector of Taxes, or the Sheriff, as the case may be, may be allowed all actual and necessary expenses for meals and lodging which are incurred in going to and returning from such conferences and institutes and while in attendance at such conferences or institutes. In addition to these expenses, the Assessor-Collector of Taxes or the Sheriff may be allowed a transportation allowance under one of the following provisions:

(1) If the Assessor-Collector of Taxes or the Sheriff uses his private automobile for going to or returning from institutes or conferences, he may be allowed Seven Cents (7¢) per mile for each mile that he actually travels in going to and returning from such conferences and institutes.

(2) If the Assessor-Collector of Taxes or Sheriff uses a public conveyance in going to and

returning from such conferences or institutes, he may be entitled to a transportation allowance equal to the actual cost of transportation.

Sec. 2. In the event the Assessor-Collector of Taxes or the Sheriff, as the case may be, is unable because of illness or other valid reason to attend any of these conferences or institutes, he may designate his First Assistant or Chief Deputy to attend such conference or institute. If for some good reason the First Assistant or Chief Deputy cannot attend these meetings, then the Assessor-Collector may designate the assistant or deputy of his own choosing to attend such institutes or conferences. The First Assistant, Chief Deputy, or some other assistant or deputy who is designated to attend the conferences or institutes may be allowed his actual and necessary expenses for meals and lodging incurred in going to and returning from such conferences or institutes, and while in attendance at such institutes or conferences. In addition to these expenses, the First Assistant, Chief Deputy, or the assistant or deputy so designated may be allowed a transportation allowance under one of the following provisions:

(1) If the First Assistant, Chief Deputy, or the assistant or deputy so designated uses his private automobile for going to or returning from institutes or conferences, he may be allowed Seven Cents (7¢) per mile for each mile that he actually travels in going to and returning from such conferences and institutes.

(2) If the First Assistant, Chief Deputy, or the assistant or deputy so designated uses a public conveyance in going to and returning from such conferences or institutes, he may be entitled to a transportation allowance equal to the actual cost of transportation.

[Acts 1957, 55th Leg., p. 1363, ch. 464.]

**CHAPTER NINE. BACK TAXES ON UNRENDERED LANDS**

- Article
- 7299. Back Taxes on Unrendered Lands.
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**Art. 7299. Back Taxes on Unrendered Lands**

In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter.

[Acts 1925, S.B. 84.]

**Art. 7300. Annual List**

On the first day of July of each year, the Comptroller shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of State and county taxes for such year.

[Acts 1925, S.B. 84.]

**Art. 7301. List Forwarded**

Upon completion of such lists, the Comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in \_\_\_\_\_ county for the year \_\_\_\_\_, as shown by the records of his office.

[Acts 1925, S.B. 84.]

**Art. 7302. Board to Value Such Lands**

Upon receipt of such list or lists by the board of equalization of such county, they shall value each tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered.

[Acts 1925, S.B. 84.]

**Art. 7303. Making of Rolls**

When the board of equalization completes the valuation, they shall cause to be made out three separate rolls, in such manner as the Comptroller may prescribe; they shall place one in the hands of the tax collector, forward one to the Comptroller, and file one in the office of the county clerk for the inspection of the public.

[Acts 1925, S.B. 84.]

**Art. 7304. Collector to Give Notice**

Upon receipt of the rolls by the tax collector, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes.

[Acts 1925, S.B. 84.]

**Art. 7305. Collections Enforced**

After the expiration of said sixty days, if the taxes on any such lands are not paid, the tax collector shall proceed to enforce the collection of said taxes in the mode provided in this title for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes.

[Acts 1925, S.B. 84.]

**Art. 7306. List of Lands Sold to State**

The Comptroller on or before the first day of each year, shall make out and forward to the tax collector of each county a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the State for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the State, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed.

[Acts 1925, S.B. 84.]

**Art. 7307. Sale**

Each tax collector, within ninety days after receipt of said list, shall call to his aid the county surveyor of his county, and, as near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or non-residents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided.

[Acts 1925, S.B. 84.]

**Art. 7308. Advertisement and Redemption**

The tax collector shall, prior to the sale of any real estate that has been previously bid off to the State at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the courthouse door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the Comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the courthouse door at public outcry, to the highest bidder for cash;

provided, that no real estate shall in any case be sold for less than the amount designated by the Comptroller as due thereon, together with all costs of advertisements and sale. The former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon, with costs of advertisement. If it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under the seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the State, and the same may be recorded in the proper county as other conveyances of real estate are recorded.

[Acts 1925, S.B. 84.]

#### Art. 7309. Land Sold, How

At the time and place appointed for said sale, the tax collector shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor.

[Acts 1925, S.B. 84.]

#### Art. 7310. Sale May be Continued

If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month.

[Acts 1925, S.B. 84.]

#### Art. 7311. Deed Executed

When a sale has been made of any real estate as herein provided, the tax collector, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor, that the person named in the certificate has purchased and

paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey.

[Acts 1925, S.B. 84.]

#### Art. 7312. Execution of Deed

When a survey has been made, as provided in the preceding article, and a copy of the field notes, certified to as true and correct by the county surveyor, filed with the tax collector, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinabove named, contain the field notes certified by the county surveyor.

[Acts 1925, S.B. 84.]

#### Art. 7313. Effect of Deed

Deeds made, executed and delivered by tax collectors under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only for fraud; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes.

[Acts 1925, S.B. 84.]

#### Art. 7314. Report of Sales

Within thirty days after sales made under the provisions of this chapter, the tax collector shall make a report to the commissioners court of his county, and also to the Comptroller, giving in said reports such description of the real estate sold as is given in the Comptroller's list, and stating the amounts due the State, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold.

[Acts 1925, S.B. 84.]

#### Art. 7315. Proceeds of Sale

Tax collectors shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the Comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the State Treasury within the said sixty days, in such manner as may be directed by the Comptroller.

[Acts 1925, S.B. 84.]

#### Art. 7316. Collections Applied

Taxes collected by the State or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively

of the Comptroller and the commissioners court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the Comptroller, be placed in the State Treasury, subject to be reclaimed by the owner of the land on proof as required in case of escheated estates. [Acts 1925, S.B. 84.]

#### Art. 7317. Costs Deducted

The tax collector shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the Comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or, if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed, and delivered under the provisions of this chapter.

[Acts 1925, S.B. 84.]

#### Art. 7318. Unsold Land Reported

If, after the expiration of ninety days after the receipt by the tax collector of the Comptroller's list, any real estate described in said list shall remain unsold, the said collector shall make separate reports of such fact to the commissioners court of his county and the Comptroller respectively; and the said parcels of real estate shall be embraced in the next list furnished by the Comptroller to the tax collector. [Acts 1925, S.B. 84.]

### CHAPTER TEN. DELINQUENT TAXES

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#### Art. 7319. "Real Property"

For the purpose of taxation, real property shall include all lands within this State, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. [Acts 1925, S.B. 84.]

#### Art. 7320. A Lien on Land

All lands or lots which have been returned delinquent or reported sold to the State, or to any city or town, for taxes due thereon since the first day of January, 1885, or which may hereafter be returned delinquent or reported sold to the State, or to any city or town, shall be subject to the provisions of this chapter, and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. [Acts 1925, S.B. 84.]

#### Art. 7321. Listed by Tax Collector

The commissioners court of each county shall cause to be prepared by the tax collector, at the

expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners court) a list of all lands, lots or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed in their respective counties and unorganized counties attached thereto, and have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the State of Texas, or such as may be furnished by the Land Commissioner, and it shall be required, in bulk assessments, to apportion to each tract or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and the assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in case the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; and the commissioners court shall cause a duplicate of same to be sent to the Comptroller; provided, where the records are incomplete in any county, the Comptroller shall furnish such county with a certified copy of the delinquent list for any year or years.

[Acts 1925, S.B. 84.]

#### **Art. 7321a. Counties of 500,000 Population; Compilation of Delinquent Tax Record**

In all counties in this State having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census, or any future Federal Census, the County Tax Collector may cause to be compiled a delinquent tax record of delinquent taxes not barred, where such county has as many as two (2) years delinquency, and the compiled delinquent records shall be examined by the Commissioners Court and Comptroller or Governing Body. The

payment for the compilation of such delinquent tax records shall be authorized at actual cost to the Tax Collector, proportionately from each the State and county taxes, or municipal fees collected from such record, such cost in no case to exceed a sum equal to Eight Cents (8¢) per item or written line on the original copy of such record, and in no instance is any compiling cost to be charged to the taxpayer, such cost per item or written line to include all corrections that are ordered made by the Commissioners Court and the Comptroller or Governing Body, and when found correct, the delinquent tax record shall be approved by them. When there are as many as two (2) years of delinquency accumulated taxes which are not shown on the tax record, a recompilation or a two (2) year supplement thereto shall then be made. The Tax Collector shall cause to be compiled like records of taxes delinquent due any district for which they collect from tax rolls other than the State and county rolls and when approved by the Governing Body of the district, the cost of same shall be allowed in the manner herein provided for compiling of records of delinquent State and county taxes. Such delinquent tax records, when approved, shall be prima-facie evidence of the delinquency shown thereon.

[Acts 1951, 52nd Leg., p. 289, ch. 171, § 1.]

#### **Art. 7322. Delinquent Tax Record**

On receipt of such delinquent tax record the county clerk of each of the counties of this State, respectively, shall certify the same to the commissioners court for examination and correction, and he shall thereafter cause the same to be recorded in a book labeled the "Delinquent Tax Record of . . . . . County." The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing the names of delinquents in alphabetical order.

[Acts 1925, S.B. 84.]

#### **Art. 7323. Delinquent Tax List Published**

Upon the completion of said delinquent tax record by any county in this State the commissioners court may, in their discretion, cause the same to be published in some newspaper published in the county once each week for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside the county to be designated by the commissioners court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against each such tract or parcel of land so advertised, which fee, when collected, shall be paid into the county treasury; and the commissioners court of said county shall not allow for said publication a greater amount than twenty-five cents for each tract of land so advertised and such publication and any other publication in a newspaper provided for in this chapter may be proved by affidavit of the printer of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which

publication was made. All corrections made in said record under this article shall be noted in the minutes of the commissioners court, and shall be certified by the county clerk to the Comptroller, who shall note the same upon his delinquent tax record. If such delinquent tax record be not published correctly, in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication, but failure to so publish such list shall be no defense to a suit for taxes due. [Acts 1925, S.B. 84.]

#### Art. 7324. Notice to Owners of Delinquency

During the month of July each year, or as soon thereafter as practicable, the collector of taxes in each county of this State shall mail to the tax roll address of each owner of any lands or lots situated in the county a notice showing the amount of taxes delinquent or past due and unpaid against all such lands and lots as shown by the delinquent tax record of the county on file in the office of the tax collector, a duplicate of which shall also have been filed in the office of the Comptroller of the State and approved by such office, but failure to send or receive such notice shall be no defense to a suit brought for taxes. Such notice shall also contain a brief description of the lands and lots appearing delinquent and the various sums or amounts due against such lands and lots for each year as they appear to be delinquent, according to such records, and it shall also recite that unless the owner of such lots or land described therein shall pay to the tax collector the amount of taxes, interest, penalties and costs set forth in such notice within thirty days from the date of notice, that the county or district attorney will institute suits for the collection of such moneys and for the foreclosure of the constitutional lien against such lands and lots. Each tax collector, as soon after mailing such notice as practicable, shall furnish to the County or District Attorney duplicates of all such notices mailed to the taxpayers in accordance with the provisions of this law, and also, lists of lands and lots located in the county appearing on the delinquent tax records in the name of "unknown" or "unknown owners," or in the name of persons whose correct address or place of residence in or out of the county said collector is unable by the use of diligence to discover or ascertain, against which taxes are delinquent, past due, and unpaid, and such lists or statements shall show the amount of State and County taxes delinquent, past due, and unpaid against each such tract or lot of land for each year they appear to be delinquent according to the delinquent tax records of the county, and shall likewise contain a brief description of all such lands and lots. The tax collector shall furnish on demand of any person, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached. Whenever any person, or persons, firm or corporation shall pay to the tax collector all the taxes, interest, penalties and costs shown by the

delinquent tax records of the county to be due and unpaid against any tract, lot or parcel of land for all the years for which taxes may be shown to be due and unpaid, prior to the institution of suit for the collection thereof, the tax collector shall issue to such person or persons, firm or corporation, a receipt covering such payment as is now required by law.

Provided that if the House Bill No. 331,<sup>1</sup> pending in the Senate, becomes a law, then the provisions of this Article 7324, so far as they may conflict with said law, shall be controlled by the provisions of said law.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 196, ch. 117, § 1.]

<sup>1</sup> No record of House Bill No. 331 becoming a law.

#### Art. 7325. Notice, How Made Up

In making up the notices or statements provided for in the preceding article, each tax collector shall rely upon the delinquent tax records compiled as required by law, approved by the commissioners court, and a duplicate of which has been filed in the office of the Comptroller, and which has or may be approved by the Comptroller. The tax collector, whenever there shall be one year or more of back taxes that have not been included in such delinquent tax records, shall prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller subject to his approval; and whenever said supplement shall have been approved by the commissioners court and by the Comptroller, the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in the preceding article. Said tax collector, in making up said delinquent tax record and supplement, shall examine the records of the district court and county clerk's office of his county, and no tract of land shall be shown delinquent on any delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall be the duty of each tax assessor to enter the post-office address of each and every tax-payer after his name on the tax rolls, and the Comptroller shall provide a column for the entry of such addresses on the sheets furnished the assessors for making up the tax rolls.

[Acts 1925, S.B. 84.]

#### Art. 7326. Suits to Foreclose Tax Lien

Whenever any taxes on real estate have become delinquent it shall be the duty of the county attorney upon the expiration of the thirty days notice provided for in the two preceding articles or as soon thereafter as practicable, to file suit in the name of the State of Texas in the district court of the county where such real estate is situated, for the total amount of taxes, interest, penalty and costs that have remained unpaid for all years since the thirty-first day of December, 1908, with interest computed thereon to the time fixed for the trial thereof at the

rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein and shown to be due and unpaid by the delinquent tax records of said county; and also that such land be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief as the State may be entitled to under the law and facts. All suits to enforce the collection of taxes as provided in this law shall include all lands in the county where the suit is brought, owned by the same person on which delinquent taxes are due, and shall take precedence over all other suits pending in said district court. If through mistake, oversight or otherwise any tax due on any land owned by the defendant is omitted from such suit, such omission shall not be any defense against the collection of the tax due and sued for. All delinquent tax records of said county in any county where such suit is brought shall be prima facie evidence of the true and correct amount of taxes and costs due by the defendant or defendants in such suit, and the same or certified copies thereof shall be admissible in the trial of such suit as evidence thereof. Such suit shall be brought as an ordinary foreclosure for debt, with averments as to the existence of a lien upon such land for such taxes, with interest at the rate of six per cent per annum, and shall pray for judgment for the foreclosure of the said lien and sale of said lands as under ordinary execution. The county attorney, or the attorney employed by the commissioners court, shall sign such petition as attorney for plaintiff. The county tax collector and county tax assessor shall furnish all affidavits, certified copies of the records of their respective offices and such other evidence as may be in their possession by virtue of such office as may be applied for by the proper attorney prosecuting such suit, and shall be allowed a fee of fifty cents for each certified copy furnished upon such application. If the amount of taxes delinquent is not more than five dollars the commissioners court may have such suit for five dollars or less instituted or not as said court may deem to be for the best interests of the county.

[Acts 1925, S.B. 84.]

**Art. 7326a. All Taxes, Penalties and Interest to be Included**

In all suits to enforce the collection of delinquent taxes brought by any duly authorized and constituted taxing authority, in addition to all delinquent taxes which may then be due, all other taxes, plus interest and penalties thereon, as provided in Section (a), Article 7336 shall be computed and prorated by the tax collector and assessor of such taxing authority up to and including the date on which judgment is rendered in such suit, so as to cover all taxes, interest and penalties which would become payable on the lands on which such suit has been brought. Proration of taxes on the current year shall be based on the tax for the preceding year, unless the tax for the current year shall have been by then determined and set, in which event the proration shall be based

on the new assessment and rate, and such proration made to the date on which judgment is given.

[Acts 1969, 61st Leg., p. 1222, ch. 389, § 2, eff. May 29, 1969.]

**Art. 7327. Unknown Owner**

In respect to lands and lots appearing on lists furnished by the tax collector to the county or district attorney in accordance with the provisions of this law, as lands and lots located in the county which appear on the delinquent tax record in the name of "unknown" or "unknown owner," or in the name of persons whose correct address or place of residence in or out of the county said collector has been unable, by due diligence to discover or ascertain, the county attorney or in the counties having no county attorney, the district attorney, immediately after the lists of such lands have been furnished him by the collector shall proceed to collect all taxes, penalty, interest and costs then due against the same in the manner prescribed in this chapter.

[Acts 1925, S.B. 84.]

**Art. 7328. Proceedings in Tax Suits**

The proper persons, including all record lien holders, shall be made parties defendant in such suit, and shall be served with process and other proceedings had therein as provided by law in ordinary foreclosure suits in the district courts of this state; and in case of foreclosure an order of sale shall issue and the land sold thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the officer in whose hands any such order of sale shall be placed, a written request that the property described therein shall be divided and sold in smaller tracts than the whole, together with the description of such smaller tracts, then such officer shall sell the lands in such subdivisions as defendant may request, and in such case shall sell only as many subdivisions, as near as may be, as are necessary to satisfy the judgment, interest, penalty and costs and after the payment of the taxes, interest, penalty and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued to be retained by him subject to the order of the court for a period of two years, unless otherwise ordered by the court, after which time the court may order the same to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of said land or lots, after which the same shall be governed by the law regulating escheat. If there shall be no bidder for such land the county attorney, sheriff or other officer selling the same, shall bid said property off to the State for the amount of all taxes, penalty, interest and costs adjudged against such property, and the district clerk shall immediately make report of such sale in duplicate, one to the Comptroller and

one to the Commissioners' Court, on blanks to be prescribed and furnished by the Comptroller. Where the property is bid off to the State, the sheriff shall make and execute a deed to the State, using forms to be prescribed and furnished by the Comptroller, showing in each case, the amount of taxes, interest, penalty and costs for which sold, and the clerk's fees for recording deeds. He shall cause such deeds to be recorded in the record of deeds by the county clerk in his county, and when so recorded, shall forward the same to the Comptroller. The county clerk shall be entitled to a fee of one dollar for recording each such deed to the State, to be taxed as other costs. When land thus sold to the State shall be redeemed the tax collector shall make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the State and county the taxes, interest and penalty found to be due each respectively. If any of the land thus sold to the State is not redeemed within the time prescribed by this law, the sheriff shall sell the same at public outcry to the highest bidder for cash at the principal entrance to the court house in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution, provided when notice is given by posting notices, one of the said notices shall be posted in a conspicuous place upon the land to be sold. Said notice shall contain a legal description of the land to be sold; the date of its purchase by the State, the price for which the land was sold to the State; that it will be sold at public outcry to the highest bidder for cash, date and place of sale. All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution, and the sheriff is hereby authorized, and it is hereby made his duty to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in event said bid or bids are rejected the land shall be re-advertised and offered for sale as provided for herein, but the acceptance by the sheriff of the bid shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any court of this State to set aside said sale on grounds of the insufficiency of the amount bid and accepted. Nothing herein shall be construed as prohibiting the State, acting through the county attorney of the county wherein the land lies, or its Attorney General, from instituting an action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. The sheriff shall send the amount received from such sale to the State Treasurer after deducting the amount of the county taxes, interest and penalty of the county tax which he shall pay to the county treasurer. The sheriff, in behalf of the State, shall execute a deed conveying title to said property when sold and paid for.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 260, ch. 99, § 1.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Vernon's Texas Rules of Civil Procedure, Rule 117a.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

**Art. 7328.1. Proceedings in Delinquent Tax Suits**

Petition

Sec. 1. Hereafter in suits brought to collect delinquent taxes on real property, the petition shall contain substantially the following allegations:

"(a) The State of Texas, hereinafter called plaintiff, brings this suit in behalf of itself, \_\_\_\_\_ County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor and Collector of Taxes for said county.

"(b) The defendants are \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who reside in \_\_\_\_\_ County, \_\_\_\_\_, and who own or claim some interest in the hereinafter described real property, which is situated in said \_\_\_\_\_ County.

"(c) That as to each tract separately assessed: That there are delinquent taxes justly due, owing and unpaid against the property described as follows, to-wit: for the following years and in the amounts, to-wit:

<u>YEARS</u> <u>DELINQUENT</u>	<u>TO WHOM ASSESSED</u> <u>(IF UNKNOWN SO STATE)</u>	<u>AMOUNTS</u>
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together with penalties, interest and costs provided by law or legally accruing thereon in the total amount of \$\_\_\_\_\_.

"(d) That all said taxes were authorized by law and each political subdivision in whose behalf this suit is brought was legally constituted and authorized to levy, assess and collect the same and all of said taxes were duly and legally levied and assessed against said real property and the owners thereof (if known) and plaintiff now has and asserts a lien on each tract of real property described and mentioned above to secure the payment of all taxes, penalties, interest and costs due thereon; and all things required by law to be done have been duly and legally performed by the proper officials.

"(e) That all of said above described real estate was, at the time said taxes were assessed, located within the boundaries of the county and each political subdivision in whose behalf this suit is brought.

"(f) The attorney whose name is signed hereto is legally authorized and empowered to institute and prosecute this action on behalf of plaintiff."

Personal Property Taxes

Sec. 2. Such form of petition, insofar as applicable, may be used in suits for the collection of delinquent taxes on personal property, and in any such

suit, it shall be sufficient to describe such personal property in such general terms as money, notes, bonds, stocks, credits, stocks of goods, wares, merchandise, fixtures, tools, machinery, equipment, automobiles, household and kitchen furniture and fixtures, beds, dressers, rugs, stoves, heaters, refrigerators, tables, pianos, radios, pictures, trunks, linens, kitchen utensils, dishes, silverware, jewelry, or any other appropriate general description, and no other or more particular description or designation shall be required as a prerequisite to a suit to obtain a personal judgment for taxes due upon personal property so described.

Prayer

Sec. 3. The prayer to any such petition having for its purpose the collection of taxes on both real and personal property shall be sufficient if it contains the following, and if for the collection of either real or personal property taxes without the other, it may be changed so as to make it applicable to the class of property involved, viz.:

“Wherefore plaintiff prays judgment against defendant for the total amount of said taxes, together with all penalties, interest, costs and other charges or expenses that may be or become legally due and owing, together with foreclosure of the tax lien against the above described real estate securing the amount against each tract of real estate above described and for personal judgment against said defendants owning said personal property at the time same was assessed for taxation for the amount shown to be due on it.”

Verification Not Required

Sec. 4. It shall not be necessary that such petition be verified.

Citation

Sec. 5. Hereafter in all suits for delinquent taxes, it shall be sufficient if the citation be substantially in the following form with proper changes to make it applicable to both real and personal property or to real or personal only according to the character of taxes sued for, to-wit:

“THE STATE OF TEXAS:

TO THE SHERIFF OR ANY CONSTABLE  
OF \_\_\_\_\_ COUNTY, GREETING:

“You are hereby commanded to summon \_\_\_\_\_ (by making publication, or by personal service in the manner provided by law): to appear at the next regular term of the \_\_\_\_\_ District Court of \_\_\_\_\_ County, Texas, to be held at the court house thereof in the city of \_\_\_\_\_ on the \_\_\_\_\_ Monday after the \_\_\_\_\_ Monday in \_\_\_\_\_, A.D. 19\_\_\_\_, then and there to answer a petition in a delinquent tax suit filed by the State of Texas suing in its own behalf and also in behalf of \_\_\_\_\_ County, and all political subdivisions of said county whose taxes are assessed and collected by the Assessor and Collector of Taxes of said county, in said Court on the \_\_\_\_\_ day

of \_\_\_\_\_, 19\_\_\_\_, in a suit numbered \_\_\_\_\_ on the docket of said Court, wherein the State of Texas is plaintiff and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are defendants. Said suit is a suit to collect taxes on the following described real estate (and/or personal property), to-wit: \_\_\_\_\_ for the years and in the amounts as follows:

<u>YEARS DELINQUENT</u>	<u>TO WHOM ASSESSED (IF UNKNOWN SO STATE)</u>	<u>AMOUNTS</u>
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together with penalties, interest, costs and expenses which have accrued, or which may legally accrue, thereon.

(In the event any other taxing unit has intervened at the time such citation is issued, said citation shall also give notice thereof and it will be sufficient, if it contains the following information, to-wit:

‘\_\_\_\_\_ District filed its petition in intervention in said cause on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, to enforce payment of delinquent taxes on the real estate above described for the years and in the amounts as follows:

<u>YEARS DELINQUENT</u>	<u>TO WHOM ASSESSED (IF UNKNOWN SO STATE)</u>	<u>AMOUNTS</u>
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together with penalties, interest, charges and expenses which have accrued or which may legally accrue thereon’).

Plaintiff and/or intervenors also seek the establishment and foreclosure of the lien securing payment of such taxes as provided by law.

Herein fail not, but have you before said Court, on the first day of the next term thereof, this writ, with your return thereon showing you have executed the same.

Witness my hand and official seal at my office in \_\_\_\_\_, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_.

\_\_\_\_\_  
Clerk, District Court  
\_\_\_\_\_ County, Texas.”

Municipal Corporations and Political Subdivisions

Sec. 6. All of the provisions of this Act simplifying the collection of delinquent State and County taxes, are hereby made available for, and when invoked shall be applied to, the collection of delinquent taxes of all municipal corporations and political subdivisions of this State or any county thereof, authorized to levy and collect taxes.  
[Acts 1939, 46th Leg., p. 664.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Vernon's Texas Rules of Civil Procedure, Rule 117a.*

Art. 7328a. Tax Sales of Real Estate

That all sales of real estate made for the collection of delinquent taxes due thereon shall be made only after the foreclosure of tax lien securing same has

been had in a court of competent jurisdiction in accordance with existing laws governing the foreclosure of tax liens in delinquent tax suits.

[Acts 1929, 41st Leg., p. 103, ch. 48, § 1.]

#### Art. 7329. Defense to Tax Suits

There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except:

1. That the defendant was not the owner of the land at the time the suit was filed.
2. That the taxes sued for have been paid, or
3. That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess.

[Acts 1925, S.B. 84.]

#### Art. 7329a. Homestead Owned by Person 65 or Older; Collection of Delinquent Taxes Deferred

Sec. 1. Any person who is 65 years of age or older and who owns and occupies a homestead, as defined in Article XVI, Section 51 of the Texas Constitution, against which any taxing unit has filed any suit to collect delinquent ad valorem taxes may, in addition to any other pleading, file an affidavit that such person owns and occupies such property as his or her homestead and that the affiant has already passed his or her sixty-fifth (65th) birthday. If the taxing unit does not file a controverting affidavit, or if upon hearing such controverting affidavits it shall be found that the affiant owns and occupies such property as homestead and has already passed his or her sixty-fifth (65th) birthday, no further action shall be taken in said cause until said homestead is no longer owned and occupied by such affiant who has passed such sixty-fifth (65th) birthday.

Sec. 2. This Act shall not extinguish or release the delinquent taxes, penalties, interest or costs against such homestead property, and in any suit upon which action is deferred pursuant to this Act no plea of limitation, laches, or want of prosecution shall apply against the taxing unit.

Sec. 3. Penalty and interest shall continue to accrue during the period of deferment prescribed in this Act and delinquent taxes, penalties, interest, and costs shall at all times remain a first and paramount lien upon the land and all mutations thereof until paid, to the end that no taxing unit shall lose its taxes, penalty, interest, and costs upon such homestead property because of deferment of action pursuant to this Act.

[Acts 1971, 62nd Leg., p. 2858, ch. 937, eff. June 15, 1971.]

Section 4 of the 1971 act provided: "If any portion of this Act be in conflict with any part or portion of Article 7298, Revised Civil Statutes of Texas, 1925, as amended, or any other law of this State, the terms and provisions of this Act shall govern."

#### Art. 7330. Sheriff to Execute Deeds

In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, the sheriff selling the same, or any of his successors in office, shall make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud.

[Acts 1925, S.B. 84.]

#### Art. 7331. Fees of Tax Collector

For calculating and preparing redemption certificates and receipts, reporting and crediting redemptions, posting Comptroller's redemption numbers on the delinquent tax record or annual delinquent list, mailing certificates of redemption to taxpayers after approval by the Comptroller, and for issuing receipts or certificates of redemption for property shown on the annual delinquent list, the tax collector shall be entitled to a fee of One Dollar (\$1) for each correct assessment of land to be sold, except that if the total amount of said costs so permitted exceeds ten per cent (10%) of the total amount of the taxes, interest and penalties due before assessing any such costs, then the total cost allowable shall be limited to ten per cent (10%) of such total amount of the taxes, interest and penalties, or One Dollar (\$1) whichever is the larger, said fee to be taxed as costs against the delinquent. Correct assessment as herein used means the inventory of all properties owned by an individual for any one (1) year. Provided, that in no case shall the State or county be liable for said fee. It is not intended by this Act to any way amend, repeal or affect any part of House Bill No. 406, Acts, Regular Session of the Fifty-second Legislature.<sup>1</sup> For performing all duties relating to the collection of delinquent taxes on real estate for which no compensation is otherwise provided the tax assessor-collector shall receive five per cent (5%) of all delinquent taxes collected by him.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 8; Acts 1953, 53rd Leg., p. 883, ch. 362, § 1.]

<sup>1</sup> Article 7336f.

#### Art. 7331a. Repealed by Acts 1930, 41st Leg., 4th C.S., p. 3, ch. 3, §§ 1, 2

#### Art. 7332. Other Fees

The County or District Attorney shall represent the state and county in all suits against delinquent taxpayers, and all sums collected shall be paid over immediately to the County Collector.

Before filing suits for recovery of delinquent taxes for any year, notice shall be given to the owner or owners of said property as is provided for in Article 7324 of the Revised Civil Statutes of Texas, 1925, as amended by Chapter 117, page 196, Acts of the 42nd Legislature, Regular Session, 1931. The fees herein provided for shall not accrue to nor shall the various officers herein named be entitled thereto in any suit unless it be proved that notice has been given to the

owner for the time and in the manner provided by law.

In all cases, the compensation of said attorney shall be such reasonable attorneys fees as may be incurred not exceeding ten per cent (10%) of the amount sued for. And provided, that in any suit brought against any individual or corporate owner, all past due taxes for all previous years on such tract or tracts shall be included; and provided further, that where there are several lots in the same addition or subdivision delinquent, belonging to the same owner, all said delinquent lots shall be made the subject of a single suit.

All fees provided for the officers herein shall be treated as fees of office and accounted for as such, and said officers shall not receive nor retain said fees in excess of the maximum compensation allowed said officers under the laws of this State; and provided further, that the County Attorney, Criminal District Attorney or District Attorney shall not be entitled to the fees herein provided for in instances where such delinquent taxes are collected under contracts between the Commissioners Court and others for the collection of such taxes, and in such instances the fees herein provided for such officers shall not be assessed nor collected.

The sheriff or constable of the county in which the suit is pending shall receive such fees as are now allowed by law in other civil cases which will cover the service of all process, and the selling of the property and executing deeds for same. If, in any such suit, process is issued to be served in counties other than the one in which suit is pending, the sheriff or constable serving same shall receive a fee of Two Dollars and Fifty Cents (\$2.50) in each suit for his services.

The District Clerk and the County Clerk shall receive for their services the same scale of fees as allowed by law in other civil cases.

Provided that the fees herein provided for in connection with delinquent tax suits shall constitute the only fees that shall be charged by said officers for preparing, filing, instituting, and prosecuting suits on delinquent taxes and securing collection thereof, and all laws in conflict herewith are hereby repealed.

In suits by counties against any of the officers herein named to recover moneys or fees collected by any such officers, limitation of action shall not apply, and no such suit shall be barred by the Statute of Limitation.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 307, ch. 143, § 1; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 9; Acts 1931, 42nd Leg., p. 428, ch. 258, § 1; Acts 1931, 42nd Leg., 2nd C.S., p. 31, ch. 16; Acts 1951, 52nd Leg., p. 538, ch. 316, § 1; Acts 1961, 57th Leg., p. 888, ch. 390, § 1; Acts 1965, 59th Leg., p. 992, ch. 479, § 1.]

Section 2 of the 1961 amendatory Act provided that this Act does not apply to litigation pending as of the effective date of this Act.

### Art. 7333. Fees Taxed as Costs; Liability of State or County

In each case such fees shall be taxed as costs against the lands to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due therein are paid, and in no case shall the State or county be liable therefor except that where the State or other taxing unit is the successful bidder at the tax sale, all charges due newspapers for the publishing of citations and notices of sheriff's sale shall be paid by the county and State and other taxing units in proportion to the taxes adjudicated to each.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 576, ch. 334, § 1.]

### Art. 7334. "Tract"

The term "tract" shall mean all lands or lots in any survey, addition or subdivision or part thereof owned by the party being sued for delinquent taxes.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 576, ch. 334, § 1.]

### Art. 7335. Contract with Attorney

Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys.

[Acts 1925, S.B. 84.]

### Art. 7335a. Delinquent Tax Contracts

Sec. 1. No contract shall be made or entered into by the Commissioners' Court in connection with the collection of delinquent taxes where the compensation under such contract is more than fifteen per

cent of the amount collected. Said contract must be approved by both the Comptroller and the Attorney General of the State of Texas, both as to substance and form. Provided however the County or District Attorney shall not receive any compensation for any services he may render in connection with the performance of the contract or the taxes collected thereunder.

Sec. 2. Any contract made in violation of this Act shall be void.

[Acts 1930, 41st Leg., 4th C.S., p. 9, ch. 8.]

**Art. 7335b. Full Time City Attorney Not Employed; Failure or Refusal to Act**

Any city or town of this State not employing a full time city attorney, or where such full time city attorney fails or refuses to collect the delinquent taxes, such city or town may contract with any competent attorney of this State for the collection of such delinquent taxes, and he shall receive for this service the same amount as now allotted attorneys collecting delinquent taxes for the State and county; and any part time city attorney may enter into such contract.

[Acts 1951, 52nd Leg., p. 247, ch. 145, § 1.]

**Art. 7336. Penalty**

(a) If any person shall pay, on or before November thirtieth of the year for which their assessment is made, one-half ( $\frac{1}{2}$ ) of the taxes imposed by law on him or his property, then he shall have until and including the thirtieth day of the succeeding June, within which to pay the other one-half ( $\frac{1}{2}$ ) of his said taxes without penalty or interest thereon.

If said taxpayer, after paying said one-half ( $\frac{1}{2}$ ) of his taxes on or before November thirtieth, as hereinbefore provided, shall fail or refuse to pay, on or before June thirtieth next succeeding said November, the other one-half ( $\frac{1}{2}$ ) of his said taxes, a penalty of eight (8%) per cent of the amount of said unpaid taxes shall accrue thereon.

If any person fails to pay one-half ( $\frac{1}{2}$ ) of the taxes, imposed by law upon him or his property, on or before the thirtieth day of November of the year for which the assessment is made, then unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of February, one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent; and on and after the first day of July, eight (8%) per cent.

(b) All poll taxes and all ad valorem taxes, unless one-half ( $\frac{1}{2}$ ) thereof have been paid on or before November thirtieth as hereinabove provided, shall become delinquent if not paid prior to February first of the year next succeeding the year for which the

return of the assessment rolls of the county are made to the Comptroller of Public Accounts. If one-half ( $\frac{1}{2}$ ) of said ad valorem taxes have been paid on or before the thirtieth day of November as herein provided, the remaining one-half ( $\frac{1}{2}$ ) of such taxes shall be delinquent if not paid before the first day of July of the year next succeeding the year for which the return of the assessment rolls of the county are made to the Comptroller of Public Accounts.

(c) If one-half ( $\frac{1}{2}$ ) of such ad valorem taxes have been paid on or before November thirtieth of the year in which the same are assessed, the discounts herein provided for shall be effective and shall apply to the last half of the ad valorem taxes if paid ninety (90), sixty (60), and thirty (30) days, respectively, prior to the first day of July, when the same become delinquent as herein provided; but such discount shall not apply to the first half of such taxes if the same have been paid on or before November thirtieth of the year in which such assessment is made.

(d) All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency. All penalties and interest provided for in this Act shall, when collected, be paid to the State, counties, and districts, if any, in proportion to the taxes upon which the penalty and interest are collected. All discounts provided for in this Act shall, when allowed, be charged to the State, counties, and districts, if any, in proportion to the taxes upon which such discounts are allowed.

(e) The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any State, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls for said year.

Penalties, interest and costs accrued against any land, lots and/or property need not be entered by the Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a statutory charge with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him.

Said list shall be made in triplicate and presented to the Commissioners' Court for examination and correction, and after being so examined and corrected said list in triplicate shall be approved by said Court. One copy thereof shall be filed with the County Clerk or Auditor, one copy retained and filed by the Assessor and Collector of Taxes, and one copy forwarded to the Comptroller with the annual settlement report of the Assessor and Collector of Taxes. Said list, as compiled by the Assessor and Collector of Taxes, and corrected by the Commissioners' Court, or the rolls or books on file in the office of

the Assessor and Collector of Taxes, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder, as to regularity of listing, assessing, and levying all taxes therein set out, and that the amount assessed against said real estate is a true and correct charge. If the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, but there is a sufficient description of the inventories in the office of the Assessor and Collector of Taxes, then said inventories shall be admissible as evidence of the description of said property.

The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector of Taxes for noting thereon the payment of taxes in semi-annual installments. He shall also prescribe suitable forms for receipts, reports and for any other purpose necessary in carrying out the provisions of this Act.

This provision is cumulative of all other provisions of the Statutes of the State prescribing the duties of the Comptroller of Public Accounts.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 196, ch. 117; Acts 1934, 43rd Leg., 4th C.S., p. 36, ch. 10, § 2; Acts 1939, 46th Leg., p. 654, § 3.]

#### Art. 7336.1. Tax Credit for Penalties Paid Following Failure of Assessor-Collector to Timely Issue Notices

Sec. 1. In any county, city, or district in which the tax assessor-collector fails to issue notices of the amount of the tax due before the first day of February of the year following the tax year, penalties for delinquent taxes shall be assessed as prescribed by Chapter 221, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 7100, Revised Civil Statutes of Texas, 1925), and Article 7336, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 2. When determining the amount of the tax due for a tax year within two years immediately following the tax year for which the assessor-collector failed to issue timely notice, the assessor-collector shall allow a tax credit equal to the amount of the penalty assessed, provided that:

(1) the full amount of taxes owing and due was paid within 60 days after issuance of the tax notice by the assessor-collector and

(2) the property for which the credit is given is legally identical to the property on which the taxes and penalties were paid. "Legally identical" refers to property having the same legal description in terms of metes and bounds, lot and block number, or other description appearing on the tax notice, but does not refer to any change in the record owner of the property.

Sec. 3. This Act does not apply to any penalties accruing on taxes which became delinquent after January 31, 1973, or prior to January 31, 1970. [Acts 1973, 63rd Leg., p. 17, ch. 13, eff. March 22, 1973.]

#### Art. 7336a. Releasing Interest and Penalties on Ad Valorem and Poll Taxes, Delinquent December 31, 1932

This article, derived from Acts 1932, 42nd Leg., 3rd C.S., p. 114, ch. 46, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before December 31, 1932 were released provided such taxes were paid on or before December 31, 1932.

#### Art. 7336b. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 211, ch. 79, § 6

#### Art. 7336c. Release of Interest and Penalties on Ad Valorem and Poll Taxes Delinquent July 1, 1933

This article, derived from Acts 1933, 43rd Leg., 1st C.S., p. 211, ch. 79, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1933 were released, provided such taxes were paid on or before December 31, 1933.

#### Art. 7336d. Release of Interest and Penalties on Ad Valorem and Poll Taxes on Payment on or Before March 15, 1935

This article, derived from Acts 1934, 43rd Leg., 4th C.S., p. 16, ch. 5, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before August 1, 1934 were released, provided such taxes were paid on or before March 15, 1935.

#### Art. 7336e. Priority in Payment of School Taxes

Sec. 1. In cases where common school district taxes and/or independent school district taxes are collectable from the same roll with any other tax, any taxpayer of any common school district or independent school district is authorized to pay one-half or all of said school taxes prior to the payment of any other tax; and upon such payment or tender of payment of one-half or all of such common school district tax and/or any independent school district tax, together with penalty, interest, and costs thereon, if any, such Collector is authorized and directed to receive the same and execute in duplicate a memorandum receipt therefor and deliver one copy to the taxpayer and keep the other as part of the records of his office, and the Tax Collector shall enter the date and amount paid in same memorandum form on the tax roll; and thereafter on full payment of all of the remaining taxes together with interest, penalty and costs, if any, as may be shown to be due on such roll, he shall issue his official tax receipt or certificate of redemption, as the case may be, in the manner provided by law and include therein the amount or amounts formerly paid.

Sec. 2. The Tax Collector may in his discretion prepare a separate roll showing the school taxes only, of any common school district or any independent school district as shown on the official tax roll delivered to him by the Assessor and in such event, issue his receipts therefrom of such school tax payments. In the event the Commissioners Court of the County and/or Board of Trustees of the independent school district authorizes in writing prior thereto, the making of such special roll, then they are hereby empowered to contract for necessary expenses therefor not to exceed the actual cost of the stationery and extra additional labor occasioned thereby.

Provided nothing herein contained shall repeal, modify or amend House Bill No. 6<sup>1</sup> or House Bill No. 7, passed at the Fourth Called Session of the Forty-third Legislature of the State of Texas,<sup>2</sup> relative to penalties, interest and costs on tax obligations.

Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed.

[Acts 1935, 44th Leg., p. 66, ch. 24.]

<sup>1</sup> Article 7255a.  
<sup>2</sup> Article 7336d.

**Art. 7336f. Remission of Delinquent Taxes, Compilation of Record of Delinquent Taxes Not Barred**

Sec. 1. The collection of all delinquent ad valorem taxes due the State, county, municipality or other defined subdivisions that were delinquent prior to and including December 31, 1939, is forever barred.

Sec. 2. In a county having as many as two (2) years taxes delinquent which have not been included in the delinquent tax record, the Assessor-Collector of taxes shall within two (2) years from the effective date of this Act, cause to be compiled a delinquent tax record of all delinquent taxes not barred by this Act. The form of the delinquent tax record shall be prescribed by the Comptroller of Public Accounts. In addition to the information or data that may be required on the form prescribed by the Comptroller, the delinquent tax record shall contain substantially the following:

a. Items described under grantee name and abstract number shall be shown first on the record; abstracts shall appear in numerical order by abstract number. In certain abstracts which have been platted into tracts, lots and blocks, divisions of subdivisions items may be shown according to the platting of the particular abstract.

b. Cities, towns and villages shall appear in alphabetical order.

c. Additions to the respective cities and towns shall be shown under the city or town to which same is attached, and in alphabetical order by addition name.

d. Within the original plat of any city or town, and within additions, the blocks shall appear in numerical order by block number, if numbered blocks, and alphabetically, if lettered blocks.

e. Within the block, lots shall appear in numerical order by lot number, if numbered lots, and alphabetically, if lettered lots.

f. Mineral, lease and royalty items may be shown in a separate section of the record and/or with the fee items. If mineral, lease and royalty items are shown in a separate section of the record, such items may appear in alphabetical order by owner name and/or as herein provided for lands and platted property.

g. Items having insufficient descriptions may appear in alphabetical order by owner name under any section of the record to which same may be correctly attached, and/or in a separate section of the record.

h. In all instances, items arranged and shown on the record as herein provided shall appear with the years in chronological order beginning with the earliest year delinquent.

The delinquent tax record shall be examined by the Commissioners Court or governing body and the Comptroller; corrections may be ordered made, and when found correct and approved by them, payment for the compilation thereof shall be authorized and made at actual cost to the Tax Assessor-Collector, proportionately from each state and county taxes, district taxes, or municipal taxes. Such cost in no case shall exceed a sum equal to twenty cents (20¢) per item or written line of the original copy of such record, and in no event shall any compiling cost be charged to the taxpayer. The delinquent tax record, when approved, shall be prima facie evidence of the delinquency shown thereon; and when there shall be as many as two (2) years of delinquency accumulated which are not shown on the record, a recompilation, or a two-year supplement thereto shall then be made as herein provided. The Tax Assessor-Collector shall cause to be compiled like records of taxes delinquent due any district for which he collects from tax rolls other than the state and county rolls, and when approved by the governing body of the particular district the cost of same shall be allowed in the manner herein provided. If any Tax Assessor-Collector fails to compile the delinquent tax record, or recompile or supplement as provided for in this Act, all fees, commissions, payments or compensations accruing to him for the collection of delinquent taxes shall be held in abeyance until such delinquent tax record has been compiled; provided, however, should the Commissioners Court and Comptroller of Public Accounts find in any instance the Tax Assessor-Collector was unable to comply with the requirements of this Act relative to compiling delinquent tax records because of the maximum compensation herein fixed, this provision shall not be applicable. If for any reason the Assessor-Collector of Taxes and his regular deputies are unable to perform the duties required by this Act, then such Assessor-Collector shall contract with a competent person or persons to compile, recompile or supplement the delinquent tax record, as the case may be, at a fee not to exceed twenty cents (20¢) per item or written line of the original copy of such record. Any contract, entered into by the Assessor-Collector and some person to perform this service, shall be approved by the Commissioners Court and Comptroller of Public Accounts and provide for prompt payment of such person or persons performing such service upon approval of such compilation by the Commissioners Court or governing body and the Comptroller.

[Acts 1935, 44th Leg., p. 355, ch. 128; Acts 1951, 52nd Leg., p. 304, ch. 181, § 1; Acts 1955, 54th Leg., p. 650, ch. 226,

§ 1; Acts 1965, 59th Leg., p. 962, ch. 462, § 1, eff. July 1, 1966; Acts 1971, 62nd Leg., p. 713, ch. 76, § 1, eff. April 26, 1971.]

Sections 2 and 3 of the amendatory act of 1965 provided:

"Sec. 2. This Act shall be in force and effect on and after July 1, 1966.

"Sec. 3. The provisions of this Act shall not apply to any delinquent taxes, the collection of which is the subject matter of a suit filed prior to the effective date of this Act."

Sections 2 and 3 of the amendatory act of 1971 provided:

"Sec. 2. All laws or parts of laws in conflict herewith are repealed insofar as a conflict exists with the provisions of this Act; and provided further, that the provisions of this Act shall be cumulative of the provisions of Chapter 10, Title 122, Delinquent Taxes, of Revised Civil Statutes, 1925, and amendments thereto.

"Sec. 3. If any section, paragraph, sentence, clause or provision of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other section, paragraph, sentence, clause or provision thereof which can be given effect without the invalid section, paragraph, sentence, clause or provision, and to this end the provisions of this Act are declared to be severable."

#### Art. 7336g. Releasing Penalties and Interest on Ad Valorem City and Independent School District Taxes Delinquent July 1, 1938

This article, derived from Acts 1939, 46th Leg., Spec.L., p. 969, § 1, as amended by Acts 1939, 46th Leg., Spec.L., p. 970, § 1 provided that all interest and penalties that had accrued on all ad valorem city and independent school district taxes that were delinquent on July 1, 1938 in all cities of 200,000 to 250,000 were released, provided they were paid on or before July 1, 1939.

#### Art. 7336h. Releasing Penalty and Interest on Taxes in Cities of 100,000 to 120,000 on Payment by August 15, 1939

This article, derived from Acts 1939, 46th Leg., Spec.L., p. 968, provided that all interest and penalties on all ad valorem city and independent school district taxes that were delinquent on July 1, 1938 in all cities of 100,000 to 120,000, in which such city should, by proper resolution so determine, were released provided they were paid on or before August 15, 1939.

#### Art. 7336i. Release of Interest and Penalties on Taxes Delinquent July 1, 1940, if Paid by November 1, 1941

This article, derived from Acts 1941, 47th Leg., p. 565, ch. 358, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1940 were released provided such taxes were paid by November 1, 1941.

#### Art. 7336j. Expired

This article, derived from Acts 1943, 48th Leg., p. 221, ch. 140 read as follows:

"Release of interest and penalties on taxes due by members of armed forces and auxiliaries during war. Section 1. There is hereby released to all members of the Armed Forces of the United States of America and their auxiliaries, and all members of the Armed Forces Reserve of the United States of America and their auxiliaries, all interest and penalties accruing subsequent to their entry into such service, on State and county ad valorem taxes on property listed on the tax rolls of any county in the name of any of such members of the Armed Forces or their auxiliaries or the Armed Forces Reserve or their auxiliaries prior to the time they joined such Armed Forces or such auxiliaries; providing that the release of such interest and penalties shall extend for the duration of World War II, and providing that the respective members of such Armed Forces and such auxiliaries and such Armed Forces Reserve and their auxiliaries shall be allowed a period of not to exceed six (6) months after the cessation of hostilities in which to pay without penalty, and interest their taxes which have accrued and which shall accrue during the duration of the war.

"Sec. 2. All laws and parts of laws in conflict herewith are hereby expressly suspended during the term of this Act so far as they may affect this Act."

Proclamation No. 2714 by the President of the United States, Dec. 31, 1946 declared "the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946."

#### Art. 7337. Cities May Avail

Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter.

[Acts 1925, S.B. 84.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Vernon's Texas Rules of Civil Procedure, Rule 117a.*

#### Art. 7338. Exemptions From This Chapter

Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been duly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are located, or lands which may have been sold to the State and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the Land Commissioner shall furnish the county judge of any county compiling its own delinquent tax record with such information as may enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the Land Office. [Acts 1925, S.B. 84.]

#### Art. 7339. May Redeem Before Sale

Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs and the penalty of ten per cent.

[Acts 1925, S.B. 84.]

#### Art. 7340. May Redeem From State

Where lands or lots shall hereafter be sold to the State or to any city or town for taxes under decree of court in any suit or suits brought for the collection of taxes thereon or by a collector of taxes, or otherwise, the owner or any one having an interest in such lands or lots shall have the right at any time within two years from the date of sale to redeem the same upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also payment of all taxes, interest, penalties and costs on or against said land or lots at the time of the redemption.

[Acts 1925, S.B. 84.]

#### Art. 7341. Evidence of Title to Redeem Land

In all cases where lands in this State have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the Constitution, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient prima facie

evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to deraign title from the sovereignty, or shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two years from the date of the tax sale by paying to the person who has previously redeemed such lands the amounts provided by law.  
[Acts 1925, S.B. 84.]

#### Art. 7342. Unknown or Nonresident

Whenever the owner or owners of any lands or lots that have been or may be returned delinquent or reported sold to the State for the taxes due thereon, for any year or number of years, are nonresidents of the State, or the name of the owner or owners of said lands or lots be unknown, then, upon affidavit of the attorney for the State setting out that the owner or owners are nonresidents, or that the owner or owners are unknown to the attorney for the State, and after inquiry cannot be ascertained, said parties shall be cited and made parties defendant by notice in the name of the State and county, directed to "all persons owning or having or claiming any interest in the following described land delinquent to the State of Texas and county of \_\_\_\_\_, for taxes, to wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition)," and further stating "which said land is delinquent for taxes for the following amounts, \$\_\_\_\_\_ for State taxes, and \$\_\_\_\_\_ for county taxes, and you are hereby notified that suit has been brought by the State for collection of said taxes, and you are commanded to appear and defend such suit at the \_\_\_\_\_ term of the District Court of \_\_\_\_\_ County, and State of Texas, and show cause why judgment shall not be rendered condemning said land (or lot) and ordering sale and foreclosure thereof for said taxes and costs of suit," which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of Two (2) Cents per word for the first insertion of such publication and One Cent per word for each subsequent insertion, or not more than the lowest published word or line rate of such newspaper shall be taxed as costs in such cases and shall be paid to the newspaper publishing said citation. If the State bids the land in at such sale, the Comptroller shall allow the Collector the amount of such publisher's fee to be paid by the Collector to the publisher. If the publication of such citation cannot be had for such fee, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the courthouse door. It shall be lawful in all cases to set forth in the petition

the names of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition. Such suit, after such publication, shall be proceeded with as in other cases; and whether any party or parties make defense or not on the trial of said case, the State and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit. A sale of said land or lot shall be had and be as binding as where defendants are personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts or other positive proof showing the payment of such taxes.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 480, ch. 303, § 5.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Vernon's Texas Rules of Civil Procedure, Rule 117a.*

#### Art. 7343. Similar Proceedings by Cities and Independent School Districts

In any incorporated city or town in which any tracts, lots, outlots or blocks of land, situated within the corporate limits of said city or town have been returned delinquent, or reported sold to said city or town for the taxes due thereon, the governing body may prepare or cause to be prepared lists of delinquents in the same manner as provided in this chapter, and such lists shall be certified to as correct by the mayor of said city or town, if any, and if said city or town has no mayor, by the presiding officer of the governing body. After said lists have been properly certified to, the governing body of the city may cause lists of delinquents to be published in a newspaper as provided for State and county delinquent taxes in this law. When twenty days from the date of last publication of said list or lists of delinquents has elapsed, the governing body of the city or town may direct the city attorney to file suits for collection of said taxes, or said governing body may employ some other attorney of the county to file suits and the city attorney or other attorney filing said suits shall be entitled to the same fees as allowed the county attorney or district attorney in suits for collection of State and county taxes, to be taxed as costs in the suit. Independent school districts may collect their delinquent taxes as above provided for cities and towns, the school board performing the duties above described for the governing body of cities, and the president of the school board performing the duties above prescribed for the mayor or other presiding officer. The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty

days the school board may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. No other county officer shall receive any fees unless services are actually performed, and in that event he shall only receive such fees as are now allowed him by law for similar services in civil suits. The employment of an attorney to file suit for taxes for cities, towns or independent school districts shall authorize said attorney to file said suits, swear to the petitions and perform such other acts as are necessary in the collection of said taxes.

All laws of this State for the purpose of collecting delinquent State and county taxes are by this law made available for, and when invoked shall be applied to, the collection of delinquent taxes of cities and towns and independent school districts in so far as such laws are applicable.

[Acts 1925, S.B. 84.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Vernon's Texas Rules of Civil Procedure, Rule 117a.*

**Art. 7344. Land Platted and Numbered**

In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes. Such maps or a certified copy of same or any part thereof, shall be admissible as evidence in all courts. The cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which said commissioners court ordered the said surveys and plat made and the cost of any map of a town or city shall be paid by such city or town when ordered by the town or city.

[Acts 1925, S.B. 84.]

**Art. 7345. Separate Payments**

When two or more lots or blocks or tracts of land are rendered in the same rendition with separate valuations, and the taxes due thereon become delinquent the tax collectors shall, when tendered, accept payment of the taxes due on each lot or block or tract of land having such separate valuation.

[Acts 1925, S.B. 84.]

**Art. 7345a. Transfer of Tax Lien**

Authority to Transfer Lien

Sec. 1. The duly qualified and acting officer authorized to collect ad valorem taxes for the State of

Texas, any county thereof, any special school district, school district, road district, levee improvement district, water improvement district, water control and improvement district, irrigation district, incorporated city or town, and any other defined subdivision of the State, is hereby authorized and empowered and it shall be his duty to transfer and convey to any person or company that pays to the State, county or any subdivision thereof mentioned hereinbefore, any taxes due upon real property at the request of the owner of said property, the tax lien held by such State, county, or subdivision to secure the payment of such taxes, under the conditions hereinafter provided and not otherwise.

Tax Receipt to Person Paying Tax

Sec. 2. If any person or company or corporation owning real estate in the State of Texas upon which taxes due to the State, county of <sup>1</sup> any subdivision thereof, as named in Section 1 of this Act, are due and unpaid, shall deliver to the tax collector, whose duty under the laws of the State of Texas is to receive or collect said taxes, a duly executed written instrument authorizing another person, company or corporation to pay such taxes and to receive from such tax collector the tax receipt showing the payment of such taxes by such other person or company and describing therein the property upon which such taxes are due, and requesting therein that such tax collector, upon the payment of such taxes, issue to such person or company so paying the same a tax receipt; and further authorizing such tax collector to transfer the tax lien held by the State, county or other subdivision to the person, company or corporation so paying such taxes, said tax collector shall, upon the payment of such taxes, as in such instrument requested and authorized, issue to such person, firm or corporation so paying said taxes, tax receipt in due form showing said payment by said person, firm or corporation, and shall endorse upon said written instrument so presented to him substantially the following:

"I, Tax Collector of \_\_\_\_\_ do hereby certify that \_\_\_\_\_ has paid the taxes in this instrument specified to be paid, and that I have, under the authority vested in me, and do by this certificate transfer and convey to \_\_\_\_\_ the tax lien that the \_\_\_\_\_ holds upon said property by virtue of the assessment and levy of said taxes against said property.

"Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 \_\_\_\_\_"

That such tax collector shall attach to said certificate his seal of office.

<sup>1</sup> So in enrolled bill. Session Laws read "or."

Tax Lien of Person Paying Tax

Sec. 3. After the payment of such taxes under such written authority and the endorsement upon such written instrument of the tax collector's certifi-

cate as hereinbefore shown, the person, company or corporation paying said taxes shall thereafter become vested with and hold such tax lien against such property as fully and to all intents and purposes as such state, county or subdivision theretofore held the same.

#### Records

Sec. 4. Such written request and certificate thereon shall, upon presentation to the County Clerk for the recording thereof, and payment of recording fee, be filed and recorded in the Deed Records of the county, or counties, in which said real estate is situated, and thereafter shall be a public record the same as if said instrument were a deed.

#### Interest Rate to Person Paying Tax

Sec. 5. It shall be unlawful for any person or company paying such taxes and taking such lien to charge a greater amount of interest upon the taxes, or taxes, penalty and interest and costs paid, than eight (8%) per cent per annum, and the collecting of any greater rate of interest shall be deemed usury, for which the person paying the same shall have all the rights and remedies provided in the Statutes in the case of usury.

#### Limitation of Foreclosure

Sec. 6. No foreclosure by the person or company taking said lien shall be had thereon within any period less than twelve months from the date of the payment of such taxes.

#### Protection of Lien Holders

Sec. 7. That in the event some other person, firm or corporation pays the taxes and takes the tax lien upon such property, then the owner and holder of any prior lien shall have the right at any time after six months from date of the payment of the taxes and before the foreclosure of such tax lien to pay to the holder of such lien the amount that he has paid for the same, together with the interest accrued thereon, according to his contract with the owner, at whose instance he paid such taxes, plus the expenses of recording the tax lien and thereby become subrogated to all rights as to such tax lien.

#### Foreclosure After 12 Months

Sec. 8. At any time after twelve months from the date of filing the transfer of the lien with the County Clerk showing the payment of the taxes to the State, county or other subdivision as hereinbefore provided, and in accordance with the contract or agreement made between the owner of such property and the person or company making the payment of the taxes (penalty, interest and cost) as to the time when such tax lien may be sued upon and foreclosed, the holder of said tax lien may sue upon his debt and for foreclosure of his tax lien and sale of the property thereunder; that upon a sale thereof the proceeds of such sale shall be applied first to the payment of court costs, and then upon the judgment including accrued interest, and attorney's fees not exceeding ten (10%) per cent as may be fixed in the

judgment, and if there be a balance thereafter left, the same shall be paid first to the lien holders in the order of their priority, and any balance remaining to the owner of said property.

#### Redemption Period

Sec. 9. The owner of such property or any person, firm or corporation holding a first lien against said property may within a year after the foreclosure and sale of such property, under such tax lien, redeem the same from the purchaser at such sale by paying to such purchaser all that he has paid for such property at such sale provided that the amount so paid to redeem said property shall not exceed the amount of the judgment of foreclosure, costs and interest accrued upon said judgment to the date of redemption therefor plus ten (10%) per cent additional upon the amount of said judgment; and upon such redemption shall receive from the person to whom the payment is made a deed to such property; provided, if the owner of the property redeem the same under this section of this Act, then all liens existing at the time of the foreclosure sale under this Act shall be of the same force and effect as if no such foreclosure sale and redemption therefrom had been had.

#### Taxpayer's Contractual Rights Unaffected

Sec. 10. This Act shall not abridge the rights of any taxpayer to enter into any contract he may desire with a lienholder for the payment of taxes; and shall not be construed to affect any such existing contract.

[Acts 1933, 43rd Leg., 1st C.S., p. 271, ch. 98; Acts 1935, 44th Leg., p. 415, ch. 165, § 1.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 7345b. Suits for Delinquent Taxes by Taxing Units

##### "Taxing Units" Defined

Sec. 1. For all purposes of this Act, the term "taxing units," shall include the State of Texas or any town, city or county in said State, or any corporation or district organized under the laws of the State with authority to levy and collect taxes.

Impleading Other Taxing Units having Tax Claims; Service on State and Other Taxing Units; Waiver of Service; Notice of Suit

Sec. 2. In any suit hereafter brought by or in behalf of any taxing unit as above defined, for delinquent ad valorem taxes levied against property by any such taxing unit, the plaintiff may implead

as parties defendant any or all other taxing units having delinquent ad valorem tax claims against such property, or any part thereof, and it shall be the duty of each defendant taxing unit, upon being served with citation as provided by law to appear in said cause and file its claim for delinquent ad valorem taxes against such property, or any part thereof. It shall be sufficient service upon the State of Texas in any county in such suit to serve citation upon the County Tax Collector charged with the duty of collecting such delinquent taxes due the State and county against such property and it shall be sufficient service upon any other taxing unit to serve citation upon the officer charged with the duty of collecting the taxes of such taxing unit or upon the Mayor, President, or Chairman or the governing body of such taxing unit, or upon the Secretary of such taxing unit. Any taxing unit having any claim for delinquent ad valorem taxes against such property may waive the issuance and service of citation upon it.

It shall be mandatory upon any such taxing unit so filing such suit or suits, in all cases where all other taxing units are not impleaded to notify all such taxing units not so impleaded of the filing of such suit or suits, such notice to be given by depositing in the United States mail a registered letter addressed to such taxing unit or units giving the name or names of the plaintiff and defendants, the Court where filed, and a short description of the property involved in said suit so that such taxing units not impleaded may have the opportunity to intervene as herein provided.

**Parties; Issuance and Service of Process**

Sec. 3. The laws governing ordinary foreclosure suits in the District Courts of this State shall control the question of parties, issuance, and service of process and other proceedings in tax suits, save and except as herein otherwise provided. The following special provisions shall apply to and govern the question of parties and issuance and service of process in tax suits:

(a) When the names of the owner or owners of the property against which foreclosure of the tax lien is sought are unknown to the attorney filing the suit for the plaintiff taxing unit, such unknown owner or owners may be made parties and given notice under the designation "unknown owner or owners of the hereinafter described land"; provided, however, that record owners of the property or any interest therein, including record lien holders, shall not be included in the designation of "unknown owners"; and persons within a period of five (5) years next preceding the filing of the suit, shall not be included in the designation of "unknown owners." When the owner of the property is deceased, and the names of the heirs of such former owner are unknown to the attorney filing the suit for the plaintiff taxing unit, such

unknown heirs may be made parties and given notice under the designation of "unknown heirs" of such deceased person, subject to the same provisions and restrictions as above set out with reference to making parties under the designation of "unknown owner or owners."

(b) Where any defendant in such suit is a resident of the State of Texas and his residence is known to the attorney filing said suit, process shall issue for service on such defendant and be served and returned as directed by Articles 2021 to 2034, inclusive, of the 1925 Revised Civil Statutes of the State of Texas. Provided, however, that a statement of the nature of the cause of action conforming to the requirement for notices by publication as hereinafter set forth in paragraph (d) below shall be sufficient in such citation, when required.

(c) Where any defendant in such suit is absent from the State or is a nonresident of the State, it shall be sufficient to serve said defendant with notice accompanied by a certified copy of plaintiff's petition as provided in Article 2037 of the 1925 Revised Civil Statutes of the State of Texas, and it shall be sufficient to serve such notice in the manner provided in Article 2038 of the 1925 Revised Civil Statutes of the State of Texas, or in the alternative, service may be had on such defendant by publication as provided in Section 3(d) hereof.

(d) Where any defendant in such suit is a nonresident of the State, where the names of the owner or owners of said property are unknown to the attorney filing the suit for the plaintiff taxing unit, where the residence of any defendant is unknown to such attorney, and where the names of the defendant heirs of any deceased person are unknown to such attorney, and such facts are recited in the petition, service of notice by publication is hereby authorized in each and all of such cases, and all defendants of classes enumerated just above may be joined in one notice; and where service is had by publication, such notice shall be directed to the defendants by name, or by designation as hereinabove provided, and shall be issued and signed by the clerk. Such notices for publication shall be sufficient if they contain the number and style of the case, the names of all parties plaintiff, intervenors and defendants, the Court in which the suit is pending and when to appear and defend the suit, which shall be the first day of the next term of the Court in which the suit is filed; and, as a statement of the nature of the suit, such notices shall show the amount of the taxes alleged to be due each plaintiff and intervenor, exclusive of interest, penalties, and costs, and shall recite that all interest, penalties, and costs allowed by law are included in the suit, a brief general description of the property, and shall also contain, in substance, a recitation that each party to such suit shall take notice of, and plead

and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein. Such notices shall be published in some newspaper published in the county in which the property is located one time a week for two (2) consecutive weeks, the first publication to be not less than fourteen (14) days prior to the first day of the term of Court to which returnable; and the affidavit of the editor or publisher of the newspaper giving the dates of publication, together with a printed copy of the notice as published, attached to such notice, shall constitute sufficient proof of due publication when returned and filed in Court. If there is no newspaper published in the county, then said publication may be made in a newspaper in an adjoining county. A maximum fee of Two and One-half (2½) Cents per line (6 words to count for a line) for each insertion may be taxed for publishing said notice. If the publication of such notice cannot be had for such fee, then service of the notice herein provided may be made by posting a copy at the Courthouse door of the county in which the suit is pending, such notice to be posted at least fourteen (14) days prior to the first day of the term of Court to which it is returnable. When notice is given as herein provided it shall be sufficient, and no other form of citation or notice shall be necessary on such defendants.

(e) Any process authorized by this Act may issue jointly in behalf of all taxing units who are plaintiffs and/or intervenors in any suit. After citation and/or notice has been given on behalf of any plaintiff and/or intervenor taxing units, the Court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued; and any taxing unit that has been made a party defendant to such suit may by answer or intervention set up and have determined its tax claims without the necessity of further citation or notice to any parties to such suit.

#### Pleading and Answering to Claims Filed

Sec. 4. Each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, and the citation upon each defendant shall so recite.

#### Proof and Finding of Reasonable and Fair Value; "Adjudged Value," Defined; Burden of Proof

Sec. 5. Upon the trial of said cause the Court shall hear evidence upon the reasonable fair value of the property, and shall incorporate in its judgment a finding of the reasonable fair value thereof, in bulk or in parcels, either or both, as the Court may deem proper, which reasonable fair value so found by the Court is hereafter sometimes styled "adjudged value," which "adjudged value" shall be the value as of the date of the trial and shall not necessarily be the

value at the time the assessment of the taxes was made; provided, that the burden of proof shall be on the owner or owners of such property in establishing the "fair value" or adjudged value as provided in this section.

#### Costs and Expenses; Approval by Court

Sec. 6. All court costs, including costs of serving process, in any suit hereafter brought by or in behalf of any taxing units for delinquent taxes in which suits all other taxing units having a delinquent tax claim against such property of any part thereof, have been impleaded, together with all expenses of foreclosure sale and such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units, not exceeding ten per cent (10%) of the amount sued for, such attorney's fees to be subject to the approval of the court together with such reasonable expenses as the taxing units may incur in procuring data and information as to the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property, shall be chargeable as court costs.

#### Order of Sale on Foreclosure; Sale

Sec. 7. In the case of foreclosure, an order of sale shall issue, and, except as herein otherwise provided, the land shall be sold thereunder as in other cases of foreclosure of tax liens.

#### Sale for Less Than Adjudged Value or Aggregate of Judgments in Suit to Party other than Taxing Unit Prohibited; Distribution of Proceeds

Sec. 8. No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said property, shall be paid by the sheriff or constable making the sale to the clerk of the court out of which execution or other final process issued to be retained and disposed of by him as follows:

Such excess funds shall be retained by the clerk of the court for a period of three (3) years from the date received, unless otherwise ordered by the court, after which time he shall forward such excess funds to the State Treasurer, who shall hold the same in trust to be paid to the

owner against whom said taxes were assessed or the heirs or legal representative of a deceased owner. The clerk shall note upon the execution docket in each such case the amount of such excess funds, the date received by him, and the date transmitted to the State Treasurer, and shall accompany such remittance with a statement upon a form to be prescribed by the Comptroller showing the style and number of the case, the court from which execution issued, which statement shall be filed and kept by the Treasurer and a duplicate thereof shall be forwarded to the Comptroller, who shall also keep an account of such excess funds transmitted to the Treasury.

At any time within four (4) years from the date such excess funds are forwarded to the State Treasurer by the clerk of the court, anyone claiming the same may file a petition in the case out of which execution or other final process issued, setting forth in said petition the basis upon which claimant claims such excess funds, and the court shall set the same for hearing. A copy of such petition shall be served on the County or District Attorney of the county, at least twenty (20) days prior to the date of hearing, and a copy of such petition shall be forwarded to the State Treasurer and the Comptroller. The County Attorney, or District Attorney if there be no County Attorney, of such county, shall represent the State at such hearing.

If the court shall find that such claimant is entitled to recover such excess funds, it shall make an order directing the Comptroller to issue his warrant on the Treasury against such trust funds for the payment of same, but without interest or cost; a copy of which order under the seal of the court shall be sufficient voucher for issuing such warrant.

After expiration of four (4) years from date such excess funds are received by the Treasurer he shall transfer the same from the trust fund to the general revenue fund unless there is then pending a petition by a claimant of such excess funds not acted upon, and if such claimant has not within four (4) years as herein provided filed a petition for such excess funds, the same shall be forever barred, and no claim shall be thereafter filed or allowed.

This Act shall apply to and govern the handling and disposition of excess funds arising from delinquent tax sales in the hands of the District Clerk or the State Treasurer at the effective date of this Act. The District Clerk shall submit to the State Treasurer all such excess funds which have been in his hands three (3) years or more prior to the effective date of this Act, but the District Clerk shall have thirty (30) days from the effective date of this Act to comply herewith, and such excess funds may be claimed within four (4) years from the effective

date of this Act in the same manner as such funds transmitted to the State Treasurer under the terms of this Act after its effective date.

After the expiration of four (4) years from the effective date of this Act such excess funds remaining in the trust fund, unless a petition is then pending claiming such funds, the State Treasurer shall transfer all of such unclaimed funds from the trust fund to the general revenue fund and thereafter the claim for such funds shall be forever barred and no claim shall be thereafter filed or allowed.

Purchasing Taxing Unit to Hold Property for Itself and Other Taxing Units  
Adjudged to Have Liens; Sale by Purchasing Taxing Unit; Proceeds;  
Failure to Sell Within Six Months after Redemption Period Expires

Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of Court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same. The taxing unit may sell and convey said property so purchased by it, or which has heretofore been purchased in the name of any officer thereof, at any time in any manner determined to be most advantageous to said taxing unit or units either at public or private sale, subject to any then existing right of redemption; and the purchaser of the property at any such sale shall receive all of the right, title and interest in said property as was acquired and is then held by said taxing unit under such tax foreclosure sale to it; but such property shall not be sold by the taxing unit purchasing the same, at private sale, for less than the adjudged value thereof, if any, as established in the tax judgment, or the total amount for which such judgment was rendered against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment shall have been found to have tax liens against said property. All such consents shall be evidenced by the joinder in the conveyance by the consenting taxing units, acting by the officers herein authorized to give such consents. Consent to such sales in behalf of the State of Texas may be given by the County Tax Collector of the county in which the property is located; and consents on behalf of other taxing units may be given by the presiding officers of their governing bodies. Deeds executed hereunder by taxing units shall be executed in their behalf by the presiding officer of their governing body and whose authority to so act in any given case shall be prima facie presumed. When such property is so sold at public or private sale, the proceeds thereof shall be received by or paid over to the taxing unit which purchased said property at the tax

foreclosure sale, for the account of itself and all other taxing units adjudged to have a tax lien against such property, and all taxing units so receiving said proceeds shall first pay out of the same all costs and expenses of Court and of sale, and distribute the remainder among all taxing units for which purchasing taxing unit purchased and held said property, pro rata and in proportion to the amounts of their tax liens against said property as established in said judgment. Public sales hereinabove provided for may either be made by the Sheriff, at the request of the taxing unit purchasing the property at the tax foreclosure sale, or by any Commissioner appointed by such taxing unit by resolution of its governing body. If the State of Texas is the taxing unit which purchased said property at the tax foreclosure sale, the Commissioners Court of the county in which the property is located shall have authority to act for the State of Texas in making private sales and conveyances of said property, as herein provided, or in requesting the Sheriff, or in appointing a Commissioner, to make public sale thereof, and in receiving and distributing the proceeds of such sales; and all sales and conveyances made in behalf of the State of Texas by the Commissioners Court, or made by the Sheriff or any Commissioner appointed by the Commissioners Court, under the provisions hereof, shall operate to transfer to the purchaser at such sale all right, title and interest acquired or held by the State of Texas as purchaser at the tax foreclosure sale. Any taxing unit, Sheriff, or Commissioner appointed by a taxing unit, making any sale under provisions hereof shall execute and deliver to the purchaser at such sale a deed of conveyance, conveying all right, title and interest of all the taxing units interested in the tax foreclosure judgment in and to the property so sold; provided, if the period for the redemption of said property from said tax foreclosure sale has not expired at the time of said sale, said conveyance shall be made expressly subject to the right of redemption provided in Section 12 of said Act.

Provided, however, that the methods of sale above set out shall not be exclusive and that if sale has not been made by, or at the instance of, the purchasing taxing unit within six (6) months after the redemption period has expired, any taxing unit which has obtained judgment in said suit may force the sale of said property by the Sheriff by written request to the Sheriff, and in the event such written request is so made to the Sheriff it shall be his duty to sell said property at public sale as hereinafter provided. All public sales provided for in this Section shall be made in the manner prescribed for the sale of real estate under execution. The notice of the sale shall contain a legal description of the property to be sold, the number and style of the suit under which same was sold at tax foreclosure sale and the date of said tax foreclosure sale; and the Sheriff or other officer making such sale is hereby authorized and it is hereby made his duty, to reject any and all bids for said land when in his judgment the amount bid is

insufficient or inadequate, and in the event said bid or bids are rejected, the land shall be readvertised and offered for sale as herein provided, but the acceptance by the Sheriff or other officer authorized to make such sale of a bid for said land shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any Court of this State to set aside said sale on the grounds of the inadequacy of the amount bid and accepted. Nothing herein shall be construed as prohibiting any taxing unit participating in said judgment from instituting action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser, provided that such action be brought within two (2) years after such sale is made, and not afterward. The Sheriff or other officer making any such sale shall receive and pay over the proceeds thereof as hereinabove provided, and the same shall be distributed as herein provided.

All sales and conveyances heretofore made by taxing units, or officers thereof, of property purchased by them, or in the name of any officer thereof, at tax foreclosure sales, for the benefit of themselves and all other taxing units interested in the tax judgment, and all sales heretofore made by the Commissioners Courts, or the Attorney General joined by the County Tax Collector, of property purchased by the State of Texas at tax foreclosure sales for the benefit of itself and other taxing units, are hereby in all things confirmed and validated; provided that this validating provision shall in no way apply to or validate any such sale the validity of which is challenged in any now pending litigation; nor shall the same apply to or validate any such sale, in cases where the Sheriff upon written request of any taxing unit, has thereafter made sale of the same property at public outcry and all such so made by the Sheriff as provided in Section 9 of said Act prior to the taking effect of this Amendment, and all such sales so made by the Sheriff are hereby in all things confirmed and validated.

No action attacking the validity of any resale of property purchased by a taxing unit at a tax foreclosure sale, or any of said sale hereafter made in accordance with, or purporting to be made in accordance with, this Section shall be commenced after the expiration of one (1) year from the date of such sale.

#### Title of Purchaser

Sec. 10. The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens and claims for ad valorem taxes against such property delinquent at the time of judgment in said suit to any taxing unit which was a party to said suit, or which had been served with citation in said suit as required by this Act. Provided, the term "all liens and claims for ad valorem taxes" shall never be construed to include assessments for maintenance and operation purposes on a pro rata per acre basis against irrigable lands authorized by law

to be made by water improvement districts, or water control and improvement districts, and no judgment foreclosing such liens and claims for ad valorem taxes shall ever prejudice the collection of said assessments or the liens securing same.

#### Subrogation of Purchaser at Void Sale

Sec. 10a. The purchaser at a void or defective tax judicial sale shall be subrogated to the rights of the taxing units in whose favor the judgment was entered, to the same extent and effect as would a purchaser be subrogated to the rights of judgment creditors other than taxing units; and the purchaser at a void or defective judicial tax lien foreclosure sale shall be subrogated to the rights and tax liens of the taxing units in whose favor the judgment was entered, to the same extent and effect as would a purchaser be subrogated to the rights and liens had he purchased at a void or defective mortgage or other lien foreclosure sale, and shall be an assignee of the liens foreclosed, and be entitled to a reforeclosure of the lien or liens to which he was thereby subrogated; provided, however, that such subrogation shall extend only to the amount of the tax actually paid by the purchaser at such void or defective judicial tax lien foreclosure sale.

#### Suits Entitled to Precedence

Sec. 11. Suits for delinquent taxes shall have precedence and priority in the District Courts of this State, and in the Appellate Courts thereof.

#### Judgment; Redemption, Right To

Sec. 12. In all suits heretofore or hereafter filed to collect delinquent taxes against property, judgment in said suit shall provide for the issuance of writ of possession within twenty (20) days after the period of redemption shall have expired to the purchaser at foreclosure sale or its or his assigns; but whenever land is sold under judgment in such suit for taxes, the owner of such property, or anyone having an interest therein, or their heirs, assigns or legal representatives, may, within two (2) years from the date of the filing for record of the purchaser's deed and not thereafter, have the right to redeem said property from such purchaser on the following basis, to wit:

(1) Within the first year of the redemption period, upon the payment of the amount of the bid for the property by the purchaser at such sale, including a One Dollar (\$1) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon, plus twenty-five per cent (25%) of the aggregate total.

(2) Within the last year of the redemption period, upon the payment of the amount bid for the property at such sale, including a One Dollar (\$1) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon, plus fifty per cent (50%) of the aggregate total; and no further or additional amount than herein specified shall be required to be paid to effect any such redemption.

In addition to redeeming direct from the purchaser, as aforesaid, redemption may also be made upon the basis hereinabove defined as provided in Articles 7284 and 7285, of the Revised Civil Statutes of Texas of 1925. The term "purchaser" as used in this Section shall include any taxing unit purchasing property at tax foreclosure sale.

#### Distribution of Redemption Money

Sec. 12-a. In all cases in which property has been redeemed from a taxing unit, as provided in Section 12 of this Act, while said property is still held by such taxing unit, the taxing unit to whom the redemption money is paid shall distribute and apply said money in the same manner as provided in Section 9 of this Act for the application and distribution of the proceeds of the resale of land; but if the land so redeemed from a taxing unit has been resold during the period of redemption, the redemption money shall be distributed pro tanto by the taxing unit receiving the same, as follows:

(a) If the redemption occurs within one (1) year after the date of the resale of said land, the purchaser at such resale shall receive, out of the redemption money, the amount paid by him for the property at such resale, plus twenty-five per cent (25%) of such amount; or

(b) If said redemption occurs more than one (1) year after the resale of such land, the purchaser at such resale shall receive, out of the redemption money, the amount paid by him for the property at such resale, plus fifty per cent (50%) of such amount; and

(c) The remainder of such redemption money, if any, after payment to the purchaser at the resale as herein provided shall be distributed, pro rata, to the taxing units adjudged in the tax foreclosure judgment to have a tax lien against the property, in the proportions of the amounts for which such liens were established.

#### Provisions of Act Cumulative; Effect of Conflict with Other Acts

Sec. 13. The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any taxing unit may be entitled, but as to any proceeding brought under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceeding. The provisions of Chapter 10, Title 122 of the Revised Civil Statutes of 1925 shall govern suits brought under this Act except as herein provided.

#### Partition of Lands Involved in Tax Suits

Sec. 15. Where suits are filed for delinquent taxes under the provisions of this Act, and the land is owned undivided by two (2) or more persons, any one or more persons owning an undivided interest in such land, may have the same partitioned as now provided by law for the partition of real estate by the district courts of this State. When said land has

been partitioned and set aside in severalty to the respective owners thereof, the taxes, penalties, interest, and costs shall be apportioned and taxed against the respective owners thereof in proportion to their respective interests in the whole, and upon the payment of taxes, penalties, interest, and costs so apportioned and taxed against such owner, and the land so set aside and partitioned to such owner in severalty, the same shall constitute full and final payment of all taxes, penalties, interest, and costs owing by such owner involved in such suit, and the land so partitioned shall thereafter be free from any further claim or lien for the taxes involved in said suit against said owner.

Provided, however, any owner or owners of a portion thereof so set aside and apportioned to him in such partition proceeding as herein provided shall fail or refuse to pay the taxes, penalties, interest, and costs taxed and apportioned against him and his interest, such suit shall proceed to a conclusion in accordance with all other provisions of this Act as to such owner and land, and the Court shall render judgment accordingly, omitting from said judgment such owner or owners and the land apportioned to such owner or owners in said partition proceeding as the taxes, penalties, interest, and costs have been paid as herein provided.

In addition to the fees now allowed by law to the county, district, or other attorney authorized by law to represent the State and county in suits provided by this Act for delinquent taxes, the judge of the district Court trying the case shall allow such attorney an additional fee for services occasioned by a partition of said land, where a partition is sought, a sum not to exceed Five Dollars (\$5) per acre for each separate tract so partitioned, the same to be taxed as part of the costs against the respective owners in proportion to their interest in the whole, the same to constitute a lien against said land until paid, and when paid shall be paid over by the tax collector to the county, district, or other attorney entitled under the law to receive the same.

"Owner" as herein used shall mean any person, male or female, firm or corporation owning an interest in said land.

[Acts 1937, 45th Leg., p. 1494-a, ch. 506; Acts 1939, 46th Leg., p. 661, § 1; Acts 1941, 47th Leg., p. 858, ch. 534, § 1; Acts 1945, 49th Leg., p. 302, ch. 219, § 1; Acts 1947, 50th Leg., p. 1061, ch. 454, §§ 1, 2; Acts 1951, 52nd Leg., p. 810, ch. 454, § 1; Acts 1953, 53rd Leg., p. 391, ch. 108, § 1.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Vernon's Texas Rules of Civil Procedure, Rule 117a.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

#### Art. 7345b-1. Venue of Suits to Collect Delinquent Ad Valorem Taxes

All actions or suits for the collection of delinquent ad valorem taxes on either real or personal property

due the State of Texas or any political subdivisions thereof, shall be brought in a court of competent jurisdiction in the County in which such taxes were levied.

[Acts 1943, 48th Leg., p. 191, ch. 110, § 1.]

#### Art. 7345b-2. Payment of Publication Costs

Sec. 1. Whenever costs for publishing citation or any other notice in a newspaper are incurred in a suit brought by any taxing unit for the collection of delinquent taxes, the cost of such publication shall be paid to the newspaper making such publication out of the general funds of the taxing unit as soon as practicable after receipt of the publisher's claim for payment. If more than one taxing unit is a party to the suit, payment of the publication costs shall be made to the newspaper by the taxing unit which filed the suit, and that taxing unit shall be entitled to reimbursement from the other taxing units which are parties to the suit for their pro-rata share of the costs upon satisfaction of the tax indebtedness or any portion thereof, either by voluntary payment of the indebtedness or by sale of property to a purchaser other than a taxing unit which is a party to the suit.

Sec. 2. The cost of publishing notice of sale of real or personal property to be sold under execution to satisfy any claim or judgment in favor of the State or any county, city, school district, or any other political subdivision, shall be paid to the newspaper publishing such notice as soon as practicable after receipt of the publisher's claim for payment. If the property has not yet been sold or proceeds from the sale have not yet been realized, such publication costs shall be paid out of the general funds of the claimant or judgment holder; and after sale and collection of the proceeds thereof the general fund shall be reimbursed for the publication costs before distribution of the proceeds to the proper fund or funds.

[Acts 1955, 54th Leg., p. 514, ch. 150.]

#### Art. 7345c. Partial Payments of Delinquent Taxes

##### Partial Payments Permitted

Sec. 1. On and after July 1, 1937, taxpayers owing delinquent State and county taxes, covering both real estate and personal property, shall be permitted to pay such delinquent taxes in partial payments under a system which shall be hereinafter provided for.

##### Partial Payment or Installment Account System to be Created

Sec. 2. The Assessor and Collector of Taxes of each county of this State shall create and establish a partial payment or installment account system whereby all delinquent taxpayers desiring to pay their taxes under the provisions of this Act may do so.

## Number of Installments; Time of Payment

Sec. 3. All payments received by the Assessor and Collector of Taxes under the provisions of this Act shall be due and payable within twenty (20) months from the date of July 1, 1937, such payments being due and payable in ten (10) equal installments, provided that the first payment of such partial payments shall be made on or before September 1, 1937.

## Default in Paying Installments; Suit for Collection

Sec. 4. If after paying one or more installments, the delinquent taxpayer pays no further installment or installments for a period of four (4) months, all of the remaining installments of said delinquent taxes shall become due and payable, and it will thereupon become the duty of the County Attorney or District Attorney or Criminal District Attorney in counties where there is no County Attorney to institute suit for the collection thereof.

## Minimum Payments and Accounts

Sec. 5. The Assessor and Collector of Taxes shall accept partial payments made by a taxpayer in any sum, provided, however, that no payment shall be less than One Dollar (\$1), and that no partial payment account will be opened for delinquent taxes which total less than Ten Dollars (\$10).

## Application of Payments; Redemption Receipts

Sec. 6. When any delinquent taxpayer shall have paid into such installment account a sum of money sufficient to pay the taxes owed by him for the earliest unpaid year upon one of the lots or tracts of land owned by him, together with the amount of penalty and interest then provided by law, the Assessor and Collector of Taxes shall withdraw from the special fund hereinafter provided for such sum and shall apply the same upon payment of said delinquent taxes, penalty, and interest, if any, and issue to such taxpayer a redemption receipt therefor. Thereafter such taxpayer may continue to make equal monthly installments into such trust fund until all of the delinquent taxes owed by him shall have been paid.

## Title to Payments

Sec. 7. All of such installments paid by such delinquent taxpayers shall immediately become the property of the State of Texas and the respective county wherein the assessed property is situated or located, in such proportion as is necessary to satisfy the taxes, penalty, and interest delinquent and due to each, and the taxpayer shall in no event be entitled to a refund thereof, or to any portion of the same.

## Sale of Property

Sec. 8. In the event the taxpayer for whom the installment or partial payment account was originally opened sells the particular property upon which said installments are to be applied, the Assessor and Collector of Taxes may, in his discretion, immediately apply upon the taxes, penalty, and interest delinquent upon such property, the amount of installments already received.

## Payments to be in Escrow

Sec. 9. All funds or moneys covering delinquent State and County taxes, received by the Assessor and Collector of Taxes under the provisions of this Act shall immediately be placed in a special account with the County Treasurer of the respective county involved, and shall be held in escrow in such account until such time as the Assessor and Collector of Taxes shall notify said County Treasurer that at least one year's taxes have been paid on an individual account, thereby permitting said County Treasurer to remit to the Assessor and Collector of Taxes the amount or amounts so specified, said funds then to be distributed to the State and county proportionately in the same manner as all other collections.

## Books, Records, and Accounts Subject to Examination

Sec. 10. The books, records, and accounts maintained by the Assessor and Collector of Taxes for the purpose of carrying out the provisions of this Act shall at all reasonable times be subject to examination by the State Comptroller of Public Accounts and the respective County Auditors in their official capacity, in the same manner as all other collection systems now provided for by law.

## Act Inapplicable to Certain Taxes

Sec. 11. The provisions of this bill shall not apply to ad valorem or personal property taxes of any city, town, or independent school district, or any political subdivision of the State, unless and until the governing body thereof shall pass an ordinance or resolution providing that the provisions of this bill shall apply to ad valorem taxes of such city, town, or independent school district, or any political subdivision of the State.

## Comptroller of Public Accounts to Prescribe Forms

Sec. 12. The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector of Taxes for noting thereon the payment of taxes in installments. He shall also prescribe suitable forms for passbooks, receipts, reports, and for any other purpose necessary in carrying out the provisions of this Act.

## Pending Suits Unaffected

Sec. 12-a. The provisions of this Act shall not affect any delinquent tax suits filed in courts of competent jurisdiction before the effective date of this Act in the counties or other political subdivisions availing themselves of the provisions of this Act.

## Repeal of Conflicting Laws

Sec. 13. All laws and parts of laws in conflict with the provisions of this Act are hereby expressly repealed in so far as the same are in conflict with the provisions hereof.

## Partial Invalidity

Sec. 14. It is further provided that in case any section, clause, sentence, paragraph, or part of this Act shall for any purpose or reason be adjudged by any Court of competent jurisdiction to be invalid,

such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the section, clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment shall have been rendered. [Acts 1937, 45th Leg., p. 923, ch. 442.]

#### Art. 7345d. Inequitable or Confiscatory Assessments

In all cases where property appearing on the tax rolls, whether rendered or unrendered, current or delinquent, appears to have been assessed at a valuation greater than that placed upon other property in such locality of similar value, or out of proportion to the taxable value of such property; or where by reason of the depreciation in the value of such property an adjustment of assessed value would be equitable and expedient; or where by reason of long delinquency, the accumulated delinquent taxes, with penalties, interest, and cost aggregate such amount as to make their collection inequitable or confiscatory, the Commissioners Court of the county in which such property is situated, upon the application of the owner thereof or his duly authorized agent, shall have the power to reopen and reconsider the original assessments. In all such cases, the Commissioners Court shall hear testimony from competent and disinterested witnesses, and may make such personal and independent investigation as may seem necessary and expedient. If, after such investigation it shall appear to the Commissioners Court that such assessments were discriminatory, or out of proportion to the taxable value of the property, or that by reason of the depreciation of value of same, or that the enforced collection of the accumulated delinquent taxes, penalties, interest, and costs would be inequitable or confiscatory, the Commissioners Court may, under its power as a Board of Equalization, make such adjustments as to assessed values of such property as it may determine to be equitable and just. And any previous fixing of values of such property for the years involved shall not be "res adjudicata" as to the particular case.

Provided, that the State Comptroller shall be furnished with a certified copy of any order passed in pursuance hereof, as shall likewise the County Assessor-Collector of Taxes, who shall make the necessary correction of his rolls. Provided further, that nothing herein shall be construed as authorizing the Commissioners Court to remit any penalty, interest, or costs that have accrued, but all such penalty, interest, and costs shall be collected on the adjusted assessment as may be authorized by existing law. [Acts 1939, 46th Leg., p. 659, § 1.]

#### Art. 7345d-1. Application of Act to Particular Taxing Bodies

Incorporated cities and towns, independent school districts having their own Assessor-Collector and Boards of Equalization, irrigation and water improvement districts, and all other governmental

agencies having the power to levy and collect taxes, shall have the right by ordinance, order or resolution properly enacted, passed, and entered to avail themselves of this law. Provided, that in such cases, the governing body of such taxing unit, or its duly constituted Board of Equalization, shall perform the functions hereinabove conferred on the Commissioners Court.

[Acts 1939, 46th Leg., p. 659, § 2.]

#### Art. 7345e. Suits to Collect Delinquent Taxes and Partition Land in Aid Thereof in Certain Counties

Sec. 1. In any county wherein is located one or more tracts of land, or portions thereof, having in excess of one thousand (1,000) acres, which such tracts are owned by twenty (20) or more persons in undivided interests, and on which there are delinquent taxes owed to such county, the Commissioners Court of such county is hereby authorized to institute suits against such owners of undivided interests in such tract or tracts for the purpose of collecting such delinquent taxes, and it is expressly authorized to seek and compel a partition of said tract or tracts between the owners thereof in order to segregate and identify the ownership for the purpose of collecting such delinquent taxes, and to employ attorneys for the purpose of instituting and prosecuting such suit or suits and to pay them such reasonable fees for such services out of the General Fund of such county as said Commissioners Court may deem advisable.

Sec. 2. After the institution of such suits the provisions of Section 15, of Article 7345b, Revised Civil Statutes of Texas as amended by the Acts of the Regular Session of the 49th Legislature, 1945, Chapter 219, shall govern the procedure in such suit, insofar as applicable, and all fees and costs therein provided for shall be in addition to the fees herein authorized for the institution of such suit or suits; provided, however, that where such fees are paid for the institution of such suit or suits the attorneys bringing such suits shall not be entitled to receive any fees under the provisions of Article 7335, Revised Civil Statutes of Texas, 1925, nor Chapter 8, Acts of the 41st Legislature, 1930, Fourth Called Session, page 9, being Article 7335a, Vernon's Annotated Civil Statutes.

[Acts 1949, 51st Leg., p. 754, ch. 404; Acts 1950, 51st Leg., 1st C.S., p. 97, ch. 34, § 1.]

#### CHAPTER ELEVEN. IN CERTAIN CASES

##### Article

- 7346. Property Omitted From Rolls.
- 7347. Property Listed Assessed.
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## Article

7354. List to be Posted.  
 7355. Unrendered Lands Assessed.  
 7356. Duty of Commissioners' Court.  
 7357. Supplemental Tax Rolls.  
 7358. Fees of Assessor.  
 7359. City May Use County Officers.

**Art. 7346. Property Omitted From Rolls**

Whenever any commissioners court shall discover through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid and should be canceled and re-assessed, or to have been declared invalid and thereby canceled by any district court in a suit to enforce the collection of taxes. No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments.

[Acts 1925, S.B. 84.]

**Art. 7347. Property Listed Assessed**

When said list has been so made up the commissioners court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under Article 7207, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof

at the time and for the years stated in said list; provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to.

[Acts 1925, S.B. 84.]

**Art. 7348. List to Operate a Lien**

The said list, when complete in all respects, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate piece of property. A copy of said list and all cancellation orders shall be furnished to the Comptroller, and a copy filed with the county clerk.

[Acts 1925, S.B. 84.]

**Art. 7349. To be Advertised**

The commissioners court shall proceed to have such list of properties advertised in the manner provided in Article 7323 after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes.

[Acts 1925, S.B. 84.]

**Art. 7350. Assessments Reduced**

In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners court shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for or against the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the Comptroller, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs as provided by law.

[Acts 1925, S.B. 84.]

**Art. 7351. Bulk Assessments Validated**

In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalidated by reason of the failure of the

assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as "bulk assessments" or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called "bulk assessments") can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor's block book as the original assessment, instead of listing as in rendered assessments, and then entering upon the tax rolls.

[Acts 1925, S.B. 84.]

#### Art. 7352. Delinquent Tax Record Published

The various counties which have not heretofore made and published a delinquent tax record, under provisions of chapter 103, acts of the regular session of the twenty-fifth legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that Act; and any county which has heretofore made a delinquent tax record for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act.

[Acts 1925, S.B. 84.]

#### Art. 7353. Property Listed by Comptroller

Whenever it shall appear to the Comptroller from an inspection of the tax rolls of any county or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, he shall make a list of such lands and send the same to the tax assessor of such county by registered letter, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list.

[Acts 1925, S.B. 84.]

#### Art. 7354. List to be Posted

Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such

notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. [Acts 1925, S.B. 84.]

#### Art. 7355. Unrendered Lands Assessed

Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of the preceding article for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, immediately upon expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the Comptroller, listing the same in the name of unknown owners, and charging up to said lands the taxes, State and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in Article 7174. If any of said lands are lands purchased from the State as belonging to the school fund, the University, or any of the asylums of the State, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued at their full and true value as though paid out and patented.

[Acts 1925, S.B. 84.]

#### Art. 7356. Duty of Commissioners Court

The tax assessor shall make up lists showing such assessments, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners court in special session, as a board of equalization for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments in so far as the provisions of the statute with regard thereto are applicable. The commissioners court without delay shall act upon said supplemented assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, approve the same, and approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of property embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid.

[Acts 1925, S.B. 84.]

#### Art. 7357. Supplemental Tax Rolls

After such supplemental assessment lists have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be pre-

pared by the tax assessor and approved by the commissioners court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes.

[Acts 1925, S.B. 84.]

#### Art. 7358. Fees of Assessor

For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments.

[Acts 1925, S.B. 84.]

#### Art. 7359. City May Use County Officers

Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax assessor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one per cent of the taxes so collected.

[Acts 1925, S.B. 84.]

### CHAPTER TWELVE. MULTISTATE TAX COMPACT

#### Art. 7359a. Multistate Tax Compact

##### Adoption of Compact

Sec. 1. The Multistate Tax Compact is adopted and entered into with all jurisdictions legally adopting it to read as follows:

#### MULTISTATE TAX COMPACT

##### ARTICLE I. PURPOSES.

The purposes of this compact are to:

1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

##### ARTICLE II. DEFINITIONS.

As used in this compact:

1. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States.

2. "Subdivision" means any governmental unit or special district of a State.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one State.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by State or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact

shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

#### ARTICLE III. ELEMENTS OF INCOME TAX LAWS.

##### Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State or pursuant to the laws of subdivisions in two or more party States may elect to apportion and allocate his income in the manner provided by the laws of such State or by the laws of such States and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party States or subdivisions thereof or in any one or more of the party States or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from State taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a State may the sum of all apportionments and allocations to subdivisions within a State be greater than the apportionment and allocation that would be assignable to that State if the apportionment or allocation were being made with respect to a State income tax.

##### Taxpayer Option, Short Form.

2. Each party State or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the State or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the Commission, shall replace the \$100,000 figure specifically provided herein. Each party State and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

##### Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

#### ARTICLE IV. DIVISION OF INCOME.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the

taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country or political subdivision thereof.

(i) "This State" means the State in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another State if (1) in that State he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that State has jurisdiction to subject the taxpayer to a net

income tax regardless of whether, in fact, the State does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this State are allocable to this State.

(b) Net rents and royalties from tangible personal property are allocable to this State: (1) if and to the extent that the property is utilized in this State, or (2) in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the State in which the property is utilized.

(c) The extent of utilization of tangible personal property in a State is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the State during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the State in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales of tangible personal property are allocable to this State if (1) the property had a situs in this State at the time of the sale, or (2) the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the State in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

7. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

8. (a) Patent and copyright royalties are allocable to this State: (1) if and to the extent that the patent or copyright is utilized by the payer in this State, or (2) if and to the extent that the patent or copyright is utilized by the payer in a State in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(b) A patent is utilized in a State to the extent that it is employed in production, fabrication, manufacturing, or other processing in the State or to the extent that a patented product is produced in the State. If the basis of receipts from patent royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the patent is utilized in the State in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a State to the extent that printing or other publication originates in the State. If the basis of receipts from copyright royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the copyright is utilized in the State in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this State if:

(a) the individual's service is performed entirely within the State;

(b) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

(c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this State if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government,

within this State regardless of the f. o. b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the State of the purchaser.

17. Sales, other than sales of tangible personal property, are in this State if:

(a) the income-producing activity is performed in this State; or

(b) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

#### ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

##### Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

##### Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate State or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

#### ARTICLE VI. THE COMMISSION.

##### Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party State who shall be the head of the State agency charged with the administration of the types of taxes to which this compact applies. If

there is more than one such agency the State shall provide by law for the selection of the Commission member from the heads of the relevant agencies. State law may provide that a member of the Commission be represented by an alternate but only if there is on file with the Commission written notification of the designation and identity of the alternate. The Attorney General of each party State or his designee, or other counsel if the laws of the party State specifically provide, shall be entitled to attend the meetings of the Commission, but shall not vote. Such Attorneys General, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this Article.

(b) Each party State shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the Commission member from that State.

(c) Each member shall be entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The Commission shall adopt an official seal to be used as it may provide.

(e) The Commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its Executive Committee may determine. The Commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The Commission shall elect annually, from among its members, a Chairman, a Vice Chairman and a Treasurer. The Commission shall appoint an Executive Director who shall serve at its pleasure, and it shall fix his duties and compensation. The Executive Director shall be Secretary of the Commission. The Commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party State, the Executive Director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the Commission and shall fix their duties and compensation. The Commission bylaws shall provide for personnel policies and programs.

(h) The Commission may borrow, accept or contract for the services of personnel from any State, the United States, or any other governmental entity.

(i) The Commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The Commission may establish one or more offices for the transacting of its business.

(k) The Commission shall adopt bylaws for the conduct of its business. The Commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party States.

(l) The Commission annually shall make to the Governor and legislature of each party State a report covering its activities for the preceding year. Any donation or grant accepted by the Commission or services borrowed shall be reported in the annual report of the Commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The Commission may make additional reports as it may deem desirable.

#### Committees.

2. (a) To assist in the conduct of its business when the full Commission is not meeting, the Commission shall have an Executive Committee of seven members, including the Chairman, Vice Chairman, Treasurer and four other members elected annually by the Commission. The Executive Committee, subject to the provisions of this compact and consistent with the policies of the Commission, shall function as provided in the bylaws of the Commission.

(b) The Commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the Commission, including problems of special interest to any party State and problems dealing with particular types of taxes.

(c) The Commission may establish such additional committees as its bylaws may provide.

#### Powers.

3. In addition to powers conferred elsewhere in this compact, the Commission shall have power to:

(a) Study State and local tax systems and particular types of State and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of State and local tax laws with a view toward encouraging the simplification and improvement of State and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party States in implementation of the compact and taxpayers in complying with State and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### Finance.

4. (a) The Commission shall submit to the Governor or designated officer or officers of each party State a budget of its estimated expenditures for

such period as may be required by the laws of that State for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party States. The total amount of appropriations requested under any such budget shall be apportioned among the party States as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party State and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the Commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party States. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The Commission shall not pledge the credit of any party State. The Commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1) (i) of this Article: provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under paragraph 1(i), the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained in this Article shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

1. Whenever any two or more party States, or subdivisions of party States, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the Commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The Commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the Commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party States and subdivisions thereof and to all taxpayers and other persons who have made timely request of the Commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party States and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the Commission.

3. The Commission shall submit any regulations adopted by it to the appropriate officials of all party States and subdivisions to which they might apply. Each such State and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### ARTICLE VIII. INTERSTATE AUDITS.

1. This Article shall be in force only in those party States that specifically provide therefor by statute.

2. Any party State or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the Commission to perform the audit on its behalf. In responding to the request, the Commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The Commission may enter into agreements with party States or their subdivisions for assistance in performance of the audit. The Commission shall make charges, to be paid by the State or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The Commission may require the attendance of any person within the State where it is conducting an audit or part thereof at a time and place fixed by it within such State for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the Commission within the State of which he is a resident: provided that such State has adopted this Article.

4. The Commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the Commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the State or subdivision on behalf of which

the audit is being made or a court in the State in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a State that has adopted this Article.

5. The Commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the Commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party States or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the Commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party States, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the States or subdivisions on whose account the Commission performs the audit, and only through the appropriate agencies or officers of such States or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party States or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the Commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

#### ARTICLE IX. ARBITRATION.

1. Whenever the Commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The Commission shall select and maintain an Arbitration Panel composed of officers and employees of State and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party State or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the Commission and to each party State or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the State or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party States or subdivi-

sions thereof. Each party State and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The Arbitration Board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the Commission's Arbitration Panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the Arbitration Panel. The two persons selected for the Board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the Board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the Arbitration Panel. No member of a Board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The Board may sit in any State or subdivision party to the proceeding, in the State of the taxpayer's incorporation, residence or domicile, in any State where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The Board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The Board shall act by majority vote.

7. The Board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the Board. In case of failure to obey a subpoena, and upon application by the Board, any judge of a court of competent jurisdiction of the State in which the Board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in States that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the Board in such manner as it may determine. The Commission shall fix a schedule of compensation for members of Arbitration Boards and of other allowable expenses and costs. No officer or employee of a State or local government who serves as a member of a Board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such Board member shall be entitled to expenses.

9. The Board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the Board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The Board shall file with the Commission and with each tax agency represented in the proceeding: the determination of the Board; the Board's written statement of its reasons therefor; the record of the Board's proceedings; and any other documents required by the arbitration rules of the Commission to be filed.

11. The Commission shall publish the determinations of Boards together with the statements of the reasons therefor.

12. The Commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party States.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

#### ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1. This compact shall enter into force when enacted into law by any seven States. Thereafter, this compact shall become effective as to any other State upon its enactment thereof. The Commission shall arrange for notification of all party States whenever there is a new enactment of the compact.

2. Any party State may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

3. No proceeding commenced before an Arbitration Board prior to the withdrawal of a State and to which the withdrawing State or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the Board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

#### ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

Nothing in this compact shall be construed to:

(a) Affect the power of any State or subdivision thereof to fix rates of taxation, except that a party State shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the Commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any State or local court or administrative officer or body with

respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

#### ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.

##### Appointment of Commission Member

Sec. 2. (a) The governor shall appoint the Comptroller of Public Accounts of the State of Texas to represent this state on the Multistate Tax Commission created by Article VI of the compact.

(b) The comptroller may designate one of his division chiefs as an alternate representative on the commission.

##### Local Government Council

Sec. 3. After consultation with representatives of local governments, the governor shall appoint three persons who are representative of political subdivisions affected or likely to be affected by the compact. The comptroller and his alternate shall consult regularly with these appointees in accordance with Article VI 1(b) of the compact.

##### Multistate Tax Compact Advisory Committee

Sec. 4. (a) The Multistate Tax Compact Advisory Committee is created. It consists of the comptroller and his alternate designated under Section 2(b) of this Act, the attorney general or his designee, two members of the Senate appointed by the President of the Senate, and two members of the House appointed by the Speaker of the House. The comptroller is chairman of the advisory committee.

(b) The committee shall meet at the call of its chairman, or at the request of a majority of its members, but in any event must meet at least three times a year. The committee may consider any matters relating to recommendations of the Multistate Tax Commission and the activities of the members representing this state on the commission.

##### Interstate Audit Article Adopted

Sec. 5. The provisions of Article VIII of the compact, relating to interstate audits, are in force with respect to this state.

[Acts 1967, 60th Leg., p. 1254, ch. 566, eff. June 13, 1967.]



# TITLE 122A. TAXATION—GENERAL

Chapter	Article
1. General Provisions -----	1.01
2. Poll Tax -----	2.01
3. Tax on Producers of Natural Gas -----	3.01
4. Occupation Tax on Oil Produced -----	4.01
5. Occupation Tax on Sulphur Producers -----	5.01
6. Motor Vehicle Retail Sales and Use Tax -----	6.01
7. Cigarette Tax Law -----	7.01
8. Cigars and Tobacco Products Tax -----	8.01
9. Motor Fuel (Gasoline) Tax -----	9.01
10. Special Fuels Tax Law -----	10.01
11. Miscellaneous Taxes Based on Gross Receipts -----	11.01
12. Franchise Tax -----	12.01
13. Tax on Coin-Operated Machines -----	13.01
14. Inheritance Tax and Federal Estate Tax Credit -----	14.00A
15. Additional Inheritance Tax [Repealed] -----	15.01
16. Stock Transfer Tax [Repealed] -----	16.01
17. Stores and Mercantile Establishments [Repealed] -----	17.01
18. Cement Production Tax -----	18.01
19. Miscellaneous Occupation Taxes -----	19.01
20. Limited Sales, Excise and Use Tax -----	20.01
21. Admissions Tax -----	21.01
22. Severance Beneficiary Tax -----	22.01
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## CHAPTER 1. GENERAL PROVISIONS

Article
1.01. Applicability of Standard Rules of Construction.
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1.13. Timely Filing of Reports.
1.14. Injunction.
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*The provisions of Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 1, codified as Taxation-General, Title 122A, arts. 1.01 to 24.01, are repealed or modified by Acts 1963, 58th Leg., p. 134, ch. 81, § 9 to the extent of conflict with Acts 1963, 58th Leg., p. 134, ch. 81, §§ 1 to 7, which amend the Texas Banking Code of 1943, Civil Statutes, arts. 342-204, 342-304, 342-305, 342-504, 342-903 and 342-908, and which add art. 342-509a thereto. See, note, under art. 1.01.*

### Art. 1.01. Applicability of Standard Rules of Construction

Unless specifically altered by this Act or unless the context requires otherwise, the provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of Texas, and of Acts, Fiftieth Legislature, 1947, Chapter 359 compiled as Texas Civil Statutes, Article 23a (Vernon's 1948) apply to this Act. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

Acts 1963, 58th Leg., p. 134, ch. 81, § 9 provided: "All laws or parts of laws (including specifically the provisions of Chapter 24, Article 1, Section 1, Acts of the Fifty-seventh Legislature, First Called Session, 1961, and the provisions of Chapter 1, Section 1, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, as amended) which are in conflict with this Act are hereby repealed or modified to the extent of such conflict only."

### Art. 1.02. Section and Article Headings

Section and article headings are not a part of this Act. They are mere catchwords designed to give some indication of the contents of the sections and articles to which they are attached.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

### Art. 1.03. Revenue Duties; Governor; Comptroller

The Governor may, whenever in his judgment the public service demands it, direct the Comptroller to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the Comptroller shall report to him in writing the results thereof, and point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of those delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by the Comptroller to be delinquent. The Comptroller shall have power at any time to examine and check up all and any expenditures of money appropriated for any of the state institutions or for any other purpose or for improvements made by the State on State property or

money received and disbursed by any board authorized by law to receive and disburse any State money. The Comptroller shall also have power and authority and it is hereby made his duty, to fully investigate any State institution when so directed by the Governor or required by information coming to his own knowledge. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof, and investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor. When the Comptroller, acting under the direction of the Governor, calls on any person connected with the public service to inspect his accounts, records or books, said person so called upon shall submit to said agent all books, records and accounts so called for without delay.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 1.031. Examination of Records

(1) For the purpose of carrying out the terms of this Title the Comptroller or any authorized agent shall have the authority to examine at the principal or any other office in the United States of any person, firm, agent, or corporation permitted to do business in this State, all books, records and papers and also any officers or employees thereof, under oath; and failure or refusal of any person, firm, agent or corporation to permit such examination shall, upon certification of such refusal by the Comptroller to the Secretary of State, immediately forfeit the charter or permit to do business in this State until such examination as is required to be made is completed. The Comptroller shall not make public or use said information derived in the course of said examination of said books, records and papers and/or officers or employees except for the purpose of a judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party. State and local public bodies and departments, officers and employees thereof, shall cooperate with and give reasonable assistance and information to the Comptroller and any authorized representative thereof, in connection with any investigations or proceedings within the jurisdiction of the Comptroller.

(2) No charge shall be made by the Comptroller to examine the books, records, papers or any officers or employees, notwithstanding any provision to the contrary in this Title.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1022, ch. 449, § 1, eff. July 1, 1967; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 4, § 5, eff. Oct. 1, 1969.]

Sections 2 to 5 of the act of 1967 provided:

"Sec. 2. Saving clause. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. Taxes incurred under any law repealed by this Act are an obligation within the

meaning of this section. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

"Sec. 3. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared severable.

"Sec. 4. Repealer. Subsection (3) of Article 1.04 of Chapter 1, Title 122A, Taxation—General, being a part of Chapter 1, Acts of the 56th Legislature, 1959, 3rd Called Session, is hereby repealed.

"Sec. 5. Effective date. This Act shall be effective July 1, 1967."

Acts 1969, 61st Leg., 2d C.S., p. 61, ch. 1, art. 10, §§ 1, 2 and 3, provided:

"Section 1. (a) Article 7 of this Act takes effect for the franchise tax year beginning May 1, 1970.

(b) All other Articles of this Act take effect October 1, 1969.

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended; and that this Act take effect and be in force as provided by Section 1 of this Article, and it is so enacted."

#### Art. 1.032. Deficiency Determination and Redetermination

(A) Deficiency Determination. If the Comptroller is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the State by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or which may come into his possession.

(B) Notice. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the taxpayer or other person at his address as it appears in the records of the Comptroller. Service by mail is complete at the time of deposit in the United States Post Office.

(C) Redetermination. Any person against whom a determination is made under Article 1.032, or any person directly interested, may petition for a redetermination within thirty (30) days after service upon the person of notice thereof. If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

(D) Oral Hearing. If a petition for redetermination is filed within the thirty-day period, the Comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him twenty (20) days' notice of the time and place of the hearing.

(E) Finality of Order. The order or decision of the Comptroller upon a petition for redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 8, eff. July 1, 1965.]

Acts 1965, 59th Leg., p. 830, ch. 402, §§ 1-7 amended various articles of chapter 14; section 9 was a savings clause; section 10 was a severability provision; section 11 repealed various articles of this Title and of the Penal Code; section 12 related to the effective date of the act and section 13 declared an emergency. See Note under article 14.00A.

#### Art. 1.033. Reports

Notwithstanding the provisions of any Article of this Title, the Comptroller may revise any report

required by any Article of this Title so as to eliminate any specific information required by the provisions of any Article of this Title. The requirement for the information which is eliminated may be reinstated by the Comptroller at any time.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 4, § 1, eff. Oct. 1, 1969.]

For effective date, severability and emergency clauses of Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, see note under art. 1.031.

#### Art. 1.04. Penalties Recovered by Suit

(1) All delinquent State taxes and penalties therefor due and owing to the State of Texas, of every kind and character whatsoever, including all franchise, occupation, gross receipts, gross production, gross premiums tax on insurance companies, inheritance, gasoline, excise and all other State taxes which become delinquent other than State ad valorem taxes on property shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas.

(2) The venue and jurisdiction of all suits arising hereunder is hereby conferred upon the courts of Travis County.

(3) Repealed.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1022, ch. 449, § 4, eff. July 1, 1967.]

#### Art. 1.045. Limitation for Collection and Refunds

(A) Limitation. Except where a shorter period of time is provided in this Title, the Comptroller shall assess any tax imposed by this Title within seven (7) years from the date such tax is due and payable, and the Comptroller may bring an action in the courts of this State, or of any other state, or of the United States within seven (7) years from the date such tax is due and payable to collect the amount delinquent together with penalties and interest. No action may be commenced to collect taxes imposed by this Title after seven (7) years (or such other shorter period of time as may be provided in this Title) from the date such tax is due and payable, provided that:

(1) In the case of a false or fraudulent return with intent to evade the tax; or

(2) In the case of failure to file a return; or

(3) In the case of gross error in information reported in a return that would increase the amount of tax payable by twenty-five percent (25%) or more; the tax may be assessed and collected, or a proceeding in any court for the collection of such a tax may be begun without assessment, at any time.

(B) Period for Sales and Use Tax. For the purpose of the Limited Sales, Excise and Use Tax imposed by Chapter 20 of this Title, the period of time provided by this Article shall be four (4) years, and any provision of Chapter 20 to the contrary is hereby repealed to the extent of such conflict.

(C) Agreement to Extend Period. If, before the expiration of the period of time prescribed in this

Article for the assessment and collection of any tax imposed by this Title, or before the expiration of any shorter period of time as may be otherwise provided in this Title, the Comptroller, or his representative, and the taxpayer have consented in writing to an assessment after such time, the tax may be assessed and collected, and an action may be commenced in any court to collect the amount delinquent, at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(D) Beginning of Period. The "date such tax is due and payable" as used in this Article, for purposes of any tax imposed by this Title, shall mean the day after the due date of the tax payment as prescribed by the Article of this Title imposing such tax, provided, however, that with respect to any tax, other than the Limited Sales, Excise and Use Tax, required to be paid by this Title prior to the effective date of this Article, such term shall mean September 1, 1965.

(E) Suspension of Time for Litigation or Redetermination. When, before the expiration of the period of time prescribed in this Article for the assessment and collection of any tax imposed by this Title, or before the expiration of any shorter period of time as may be otherwise provided for such assessment and collection by any Article of this Title, a tax payment is made under protest, a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of tax due, or an administrative proceeding is pending before the Comptroller for redetermination of tax liability, the period of time prescribed in this Article or otherwise provided by any Article of this Title shall be suspended with respect to the amount of the tax in issue in the protest, court proceeding or administrative proceeding, until such matters are finally determined, whereupon the running of said period of time shall resume until finally expired.

(F) Extension of Time for Action by Regulatory Bodies.

(1) Notwithstanding any provision of any other Article of this Title, when any administrative proceeding before any local, state or federal regulatory agency or judicial proceeding arising therefrom, results in a final determination which affects the amount of tax liability imposed by any Article of this Title, such final determination shall be reported to the Comptroller within sixty (60) days after becoming final, with a statement of the reasons for the difference in tax liability, in such detail as the Comptroller may require.

(2) If, from such report or from investigation, it shall appear that the tax liability affected by such final determination has not been fully assessed, the Comptroller shall, within one year after the receipt of such report or within one year of discovery of such final determination, if unreported, assess the deficiency, with penalties

and interest. The Comptroller may bring an action in the courts of this State, or of any other state, or of the United States within such one-year period to collect such deficiency together with penalties and interest. If no report of such final determination is filed within the prescribed sixty-day period, then the Comptroller shall have one year in which to assess any deficiency, penalties and interest, and bring an action to collect such deficiency, penalties and interest, from the date such final determination is reported to the Comptroller, or from the date the Comptroller discovers such final determination, whichever shall first occur.

(3) Should such report or investigation disclose an overpayment of such tax liability, the Comptroller shall issue a refund or credit for such overpayment within the aforementioned one-year period after receiving such report or discovering such final determination.

(4) No action may be commenced to collect any deficiency disclosed by such final determination after one year from the date the Comptroller receives such report or discovers such final determination unless the period prescribed for such an action by this Article or any other Article of this Title has not expired.

(G) Limitation for Refunds and Credits. Notwithstanding any provision of this Title, the period of time during which the Comptroller may refund any overpayment of tax or issue a credit for overpayment of any tax imposed by this Title shall not expire prior to the expiration of the period of time within which the Comptroller may assess a deficiency with respect to such tax. The Comptroller shall not issue any such refund or credit after the time for assessment of a deficiency has expired unless such tax was paid under protest and such refund or credit is made under court order.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1019, ch. 448, § 1, eff. July 1, 1967.]

Sections 2 and 3 of the act of 1967 provided:

"Sec. 2. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 3. Effective date. This Act shall be effective July 1, 1967."

**Art. 1.05. Payment of License or Privilege Taxes Under Protest**

**Protest**

(1) Any person, firm, or corporation who may be required to pay to the head of any department of the State Government any occupation, gross receipts, franchise, license or other privilege tax or fee, and who believes or contends that the same is unlawful and that such public official is not lawfully entitled to demand or collect the same shall, nevertheless, be required to pay such amount as such public official charged with the collection thereof may deem to be due the State, and shall be entitled to accompany such payment with a written protest, setting out fully and in detail each and every ground or reason

why it is contended that such demand is unlawful or unauthorized.

**Suits for Recovery of Taxes or Fees**

(2) Upon the payment of such taxes or fees, accompanied by such written protest, the taxpayer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any taxpayer all other taxpayers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporation or association of persons who have paid under protest such taxes or fees referred to in section (1) hereof.

**Payment of Additional Taxes under Protest after Filing Suit; Amendment of Petition; Jurisdictional Amount**

(3) After such suit is filed in a court of competent jurisdiction in Travis County, and before such suit is tried by said court, said taxpayer pays additional taxes under protest, the grounds of protest being the same as in the original petition filed in said court, and the total of said taxes exceeds the jurisdiction of said court, then the taxpayer will be authorized to file suit within ninety (90) days after the payment of such additional taxes in a court in Travis County which has jurisdiction of the total amount of said taxes paid under protest, and when such suit is filed it shall be deemed to have been filed in conformity with provisions of this Chapter; provided further, that a taxpayer may amend his original petition setting up such additional taxes paid under protest, and such amendment, if filed within ninety (90) days after the date of payment of such additional taxes under protest, shall not be considered a new cause of action. Provided further, that if any appeal is taken from the final judgment rendered in such suit, the taxpayer will not be relieved of the duty of continuing paying said taxes under protest pending the appeal of said case; however, it will not be necessary for such taxpayer to file suit within ninety (90) days after the payment of such taxes, but the disposition of such taxes shall be governed by the outcome of the original suit. The provisions of this Article shall apply to all taxes paid under protest, and which taxes have not been finally determined to belong to the State.

**Lists Remitted to State Treasurer**

(4) It shall be the duty of such public official to transmit daily to the State Treasurer all money so

received, with a detailed list of all those remitting same, and he shall inform the State Treasurer in writing that such money was paid under protest as hereinabove provided. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each department; and the cashier of the Treasury Department shall keep a cash book to be called "Suspense Cash Book," in which to enter such deposit receipts. Upon the receipt of such money by the State Treasurer it shall be his duty and he is hereby required to immediately and forthwith place the same in State depositories bearing interest in the same manner as any other funds of the State required to be placed in such depositories at interest, and the State Treasurer shall further be required to allocate whatever interest is earned on such funds and to credit the amount thereof to such suspense account until the status of such money is finally determined as herein provided.

#### Refunds and Warrants

(5) If suit is not brought within the time and within the manner provided in this Article, or in the event it finally be determined in such suit that the sums of money so paid or any portion thereof, together with the pro rata interest earned thereon, belong to the State, then and in that event it shall be the duty of the State Treasurer to transfer such money from the suspense account to the proper fund of the State by placing the portion thereof belonging to the State in such fund by the issuance of a deposit warrant. When such deposit warrant or warrants are issued, they shall be entered in the cash book, and the proper fund to which such money is so transferred shall be properly credited therewith. In the event, however, that suit is brought by such taxpayer within the time and within the manner provided in this Article, and it be finally determined that such money so paid by such taxpayer, or any part thereof, was unlawfully demanded by such public official and that the same belongs to such taxpayer, then and in that event it shall be the duty of the State Treasurer to refund such amount, together with the pro rata interest earned thereon, to such taxpayer by the issuance of a refund warrant, the same to be issued in separate series and to be used for making such refunds, to be styled and designated "Tax Refund Warrants" and such warrants shall be written and signed by the Comptroller and countersigned by the State Treasurer and charged against the suspense account, as hereinabove provided and shall then be returned to the Comptroller and delivered by him to the persons entitled to receive the same.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 1.06. Injunctions Against Collection of Excise, Occupation, and Certain Other Taxes, Fees and Penalties

(1) Before any restraining order or injunction shall be granted in this State to restrain or enjoin

the collection of any excise tax, occupation tax, sales tax, severance tax, gross receipts tax, license or permit tax, and registration or filing fee or any statutory penalties assessed for failure to pay any of such taxes and before any restraining order or injunction shall be granted against any state official or his authorized representatives in this State to restrain or enjoin the collection of any of the foregoing taxes, fees and penalties, the applicant therefor shall pay into the suspense account of the State Treasurer all taxes, fees and penalties then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent or attorney.

(2) Provided, however, that unless otherwise provided by Statute, said applicant may, in lieu of paying such taxes, fees and penalties into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient bond to guarantee the payment of such taxes, fees and penalties in an amount equal to twice the amount of all taxes, fees and penalties then due and which may reasonably be expected to become due during the pendency of said injunction. The amount of such bond and the sureties thereon shall be approved by and acceptable to the judge of the court granting said injunction and the Attorney General of this State and the application for said restraining order or injunction shall reflect under oath of the applicant, his agent or attorney, that said bond has been approved and filed as aforesaid. Whenever it appears to the Attorney General that any such bond has become insufficient to cover double the amount of the taxes, fees and penalties accruing subsequent to the granting of said injunction, the said Attorney General shall demand of said applicant that additional bond be filed.

(3) Provided, further, that said applicant shall keep during the pendency of the injunction and for a period of one (1) year thereafter open to the inspection at all times of the Attorney General of this State and all other State officials authorized to enforce the collection of such taxes, fees and penalties, a well bound book record of all taxes accruing during the pendency of such restraining order or injunction. Such book record shall include a record of purchases, receipts and sales or other disposition of all commodities, products, materials or articles upon which such taxes are levied or by which the amount of such taxes are measured.

(4) Provided further, that said applicant shall make and file with the state official authorized to enforce the collection of the tax involved, on Monday of each week, a report on a form or forms to be prescribed by said state official showing the weekly accruals of the tax involved together with total purchases, receipts, sales and other disposition of all commodities, products, materials, and articles on which the tax involved in such injunction is levied or by which such tax is measured. Such report shall also show the name and address of all persons from whom such commodities, products, materials and articles were purchased or received and the name

and complete address of all persons to whom such commodities, products, materials and articles were sold or distributed. If payment of the tax involved is evidenced or measured by the sale or use of stamps or tickets, a complete record of all such stamps and tickets used, sold or handled shall be kept and shall be included in said report.

(5) Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing, if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort to keep the records or make and file the reports required herein or to comply with the Attorney General's demand to file any additional bond necessary to cover double the amount of taxes, fees and penalties accruing subsequent to the granting of said injunction or in the absence of a bond, to pay, on Monday of each week, into the suspense account of the Treasurer of Texas all taxes, fees and penalties involved in said litigation and thereafter becoming due, and such payments shall be made before said taxes, fees and/or penalties become delinquent.

(6) Any proceedings to enjoin the collection of any of the foregoing taxes shall be in a court of competent jurisdiction in Travis County, Texas.

(7) The Attorney General or any state official authorized to enforce the collection of the tax involved may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Article or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which the applicant resides or any other peace officer in this State.

(8) In the event the injunction is finally dissolved or dismissed the Treasurer shall make demand upon the applicant and his sureties on any bond filed in lieu of the payment of any taxes, fees and penalties, for immediate payment of said taxes, fees and penalties which if not paid shall be recovered in a suit to be filed by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

(9) Provided further, that if said injunction is dissolved or dismissed all taxes, fees and penalties or other funds paid into the suspense account to the Treasurer under the provisions of this Article shall be paid to the funds to which said taxes, fees and penalties are allocated.

(10) If the final judgment maintains the right of the applicant to a permanent injunction to prevent the collection of such taxes, the funds so deposited shall be refunded by the Treasurer to said applicant together with any depository interest the Treasurer may have collected for the deposit of such funds. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

Sections 9 and 10 of Acts 1937, 45th Leg., ch. 310, provided:

"Sec. 9. All taxes, penalties and interest accruing to the State of Texas by virtue of any of the repealed or amended provisions as set out in this Act before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties and interest accruing under the provisions of prior or pre-existing cigarette tax laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

"Sec. 10. The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. Providing, that all other laws or parts of laws that conflict herewith are hereby in all things repealed."

#### Art. 1.07. Lien and Recording; Failure to Withhold Taxes; Penalties; Fines, etc., Cumulative

(1) (a) In Articles 1.07 and 1.07A, "person" means any individual, firm, copartnership, agency, joint venture, associations, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, cooperative, assignee, any entity, or any other group or combination acting as a unit, and their successors, assigns, administrators, executors, and representatives.

(b) All taxes, fines, penalties and interest due by any person to the State of Texas by virtue of this Title shall be secured by a lien upon all property of the person owing the taxes subject to execution, owned at the time the lien attaches. As to the person liable for such taxes the lien shall attach to all of his property as of the date the tax is due and payable.

(c) No lien provided for by Title 122A shall be effective as against any bona fide mortgagee, holder of a deed of trust, purchaser or judgment creditor or any other person who for a bona fide consideration has acquired a lien, title or other right or interest in any real estate or personal property of the taxpayer prior to the filing, recording and indexing of such lien in the county where real estate is situated, and for personal property, in the county of the residence of the taxpayer at the time that said tax became due and payable or in the county in which said taxpayer filed his report.

(d) The liens provided for in Articles 1.07, 1.07A and 1.07B are cumulative and in addition to all other liens for taxes, fines, penalties and interests now provided by law.

(e) (i) The Comptroller shall prepare, issue and cause to be filed the notices herein provided for. The notice shall state the name and address of the taxpayer, the taxable periods of time for which the tax or taxes are claimed to be delinquent and the amount of tax only, exclusive of penalty, interest and any other charge, due for each period, and the nature of the tax or taxes, and such other relevant statements as the Comptroller may deem proper.

One notice shall be sufficient to cover all taxes of the same nature which may accrue subsequently to the filing of the notice.

(ii) The Comptroller or his authorized representative may execute, authenticate, certify or sign or cause to be executed, authenticated, certified or signed any notice of lien, release, and all other

instruments authorized by this Act to be executed by him or under his direction with his facsimile signature and seal in lieu of his manual signature and his seal and acknowledgment.

(f) (i) The lien shall not be valid or effective as against a bona fide purchaser for value of goods, wares or merchandise daily exposed for sale in the regular course of business and which have been purchased and taken into possession, actual or constructive, prior to the time the goods; wares or merchandise have been taken into legal custody by virtue of a valid legal writ or other lawful process.

(ii) No bank or savings and loan institution shall be required to recognize the claim of the State to any deposit or withhold payment of any deposit to the depositor or to his order unless and until it is served by the Comptroller with notice of the State's claim. Notice shall be served by certified mail to the bank or institution or by written notice served personally upon its president, any vice-president, cashier or any assistant cashier.

(g) (i) Any transfer of property or an interest in property within six (6) months immediately preceding the filing of the notice of liens provided for by this Article (a) by any person who is delinquent in the payment of any tax provided for by this Title; or (b) by any person who is insolvent at the time of such transfer and has received, collected or withheld money as a tax under the provisions of this Title; shall be deemed a preferential transfer and voidable by the Comptroller if such transfer (1) is with intent to defraud the State and (2) is without adequate and sufficient consideration. The Comptroller shall have the right to recover by suit brought by the Attorney General in Travis County, Texas, the property so transferred or the value of such property. This section is cumulative and in addition to any rights accruing to the Comptroller as a creditor under the general laws of this State.

(ii) All property of such preferential transferee subject to execution shall be subject to a prior lien in favor of the State to secure recovery of the amount of the preferential transfer.

(h) (i) Any person may voluntarily pay to the Comptroller the tax, fines, penalties and interest due under any provision of this Title by any other person for any one or more periods of time for which they may be due, and any judgment for such taxes, and may receive from the Comptroller of Public Accounts an assignment of all of the rights, liens, judgments, and remedies of the State to secure and enforce payment thereof, and shall be fully subrogated to and succeed to all such rights, liens, judgments, and remedies of the State. At least 30 days before such assignment can be made, the delinquent taxpayer must be notified by certified mail addressed to the taxpayer at his last known address of the pending assignment as it appears in the Comptroller's records.

(ii) Venue for enforcement by any person other than the State of such an assigned claim and judgment shall be governed by the general law of venue

rather than by the special venue provisions of this Title.

(iii) The rights, liens, remedies, and judgments originally assigned by the Comptroller may be re-assigned by any subsequent holder thereof, and each subsequent assignment, unless expressly limited in writing, shall pass to the assignee all of the original rights, liens, remedies, and judgments of the State to secure and enforce payment of such claim, if notice required above in (i) has been given or complied with.

(iv) All transfers and assignments heretofore made by the Comptroller of rights, liens, judgments, and remedies of the State to any person who may have paid any tax due by another under this Title are hereby fully validated and confirmed, and such transferees and their assignees are fully subrogated to and succeed to all rights of the State to enforce collection of the taxes paid, subject to the provisions of this Subdivision.

(v) Any person to whom an assignment of state tax lien has been made may have his assignment recorded in the State Tax Lien Record Book as above provided in paragraph (e), Section 1 in the Office of the County Clerk and indexed to show the name of the assignor and assignee and the date of such assignment.

(i) All sums due by any employing unit to the Texas Employment Commission under the Texas Unemployment Compensation Act shall become a lien on all the property both real and personal belonging to such employing unit or to any individual so indebted. The lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent. The provisions of Articles 1.07, 1.07A, and 1.07B of this Chapter govern the enforcement of this lien. The Texas Employment Commission has all the duties imposed, and the power and authority in administering and enforcing the lien created by this Subdivision (i) that is conferred on the Comptroller for the enforcement of other liens under Articles 1.07, 1.07A, and 1.07B of this Chapter. This lien is cumulative of the lien provided in the Texas Unemployment Compensation Act and that lien is effective according to its terms.

(2) Any person purchasing any natural resources upon which a tax is levied by this Title who fails to deduct and withhold the proper amount of taxes which are due and unpaid under any provision of this Title, and any person who has received or collected any tax or any money represented to be a tax from another shall be liable to the State for the full amount of such taxes plus any accrued penalties and interest thereon.

(3) All penalties, fines, forfeitures or penal offenses provided in this Title as to the same offense, shall be cumulative of one another and of any other fines, penalties, forfeitures, or penal offenses provided by any other law of this State applicable to such offense. Should any such fines, penalties, forfeitures, or penal offenses be in conflict so that such could not be cumulative as above provided, then that

law or part of the law containing the provision for the highest penalty in dollars shall be effective and apply as to each such offense, and that law or part of the law containing the provision for the highest fine in dollars (where a fine alone is provided for) shall be effective and apply to each such offense, and in case of forfeiture that law or part of the law containing a provision for the most onerous forfeiture shall be effective and apply to each such offense, and in case of penal offenses containing a provision providing for imprisonment, that law or part of the law containing the provision for the longest maximum imprisonment shall be effective and apply to each such offense; and in each such instance, the lesser fine, penalty, forfeiture, penal offense or punishment shall be suspended.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 201, ch. 104, § 1, eff. May 5, 1961; Acts 1969, 61st Leg., p. 2337, ch. 792, §§ 1, 2, eff. Jan. 1, 1970.]

Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XX §§ 3, 4, and 7, were savings provisions, section 5 was a severability clause, section 6 made allocations of tax revenues subject to appropriation, and section 9 related to reports, rules and regulations.

Section 4 of the amendatory Act of 1961 read as follows: "All laws and parts of laws in conflict with the provisions of this Act are hereby repealed; and, in case of such conflict, the provisions of this Act shall control and be effective. This Act shall have no application to litigation pending in any court of competent jurisdiction in this State."

Sections 3 and 4 of the act of 1969 amended articles 1.07A and 1.07B respectively. Section 5 repealed Vernon's Ann.Civ.St. art. 7083b. Sections 6 to 8 provided:

"Sec. 6. All taxes, fines, penalties and interest which may have become delinquent and due under the provisions of Article XXI, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941 (Article 7083b, Vernon's Texas Civil Statutes), at the effective date of this Act shall be secured by and collected under its terms and all liens, rights, and remedies granted by Article XXI are hereby preserved as to such delinquent claims only.

"Sec. 7. This Act takes effect on January 1, 1970.

"Sec. 8. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed; and, in case of such conflict, the provisions of this Act shall control and be effective. This Act shall have no application to litigation pending in any court of competent jurisdiction in this state."

#### Art. 1.07A. Recording State Tax Liens

(1) (a) Each county clerk shall, at the expense of the county, provide a suitable well-bound book, to be called "State Tax Liens" in which he shall record the notices of state tax liens filed with him by the Comptroller.

(b) Upon receipt of the notices he shall promptly note on each the date and hour of the filing thereof.

(c) He shall promptly index each notice in an alphabetical index provided for that purpose which shall show the name of each person liable for the tax and the book and page number of the notice.

(d) The notice filed by the Comptroller with the clerk shall be recorded in the "State Tax Liens" book, and constitutes the record thereof.

(e) The clerk shall furnish to the Comptroller on a form as prescribed by the Comptroller notice that such lien has been received noting that tax lien was filed and recorded, the time and the date thereof, the volume and page number of the record of each notice.

(2) (a) (i) Payment in whole or in part of any tax secured by a state tax lien may be evidenced by a receipt, acknowledgment, or release signed by an authorized representative of the state agency that filed the lien.

(ii) The release shall be filed in the Office of the County Clerk in the manner as other releases and the County Clerk shall receive the customary fee therefor, at no expense to the State of Texas. Whereupon the clerk shall release the lien filed with him in accordance with the rules and regulations of his office.

(iii) This payment to the clerk constitutes his full fee for the filing and indexing the release of the lien notice.

(iv) The Comptroller shall furnish to the State Highway Department release of any tax liens filed by him with that department.

(3) Release in whole or in part by any assignee of the State's claim for taxes and of its tax lien and of any judgment for such taxes secured by such lien may be filed and recorded with the county clerk for the same fee and in the same manner as releases by the Comptroller or other state agency which may file notice of its lien in the state tax liens records.

(4) The Comptroller upon approval of the Attorney General may release the state's tax lien upon any specific property upon payment to him of the reasonable cash market value of the property, whether real or personal. The value shall be ascertained in the manner prescribed by the Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 201, ch. 104, § 2, eff. May 6, 1961; Acts 1969, 61st Leg., p. 2341, ch. 792, § 3, eff. Jan. 1, 1970.]

Sections 1 and 2 of the act of 1969 amended art. 1.07. Section 4 amended art. 1.07B. See, also, notes under art. 1.07.

#### Art. 1.07B. Status of Tax Liens

(1) The lien on both personal property and real estate shall continue until the taxes secured by it are paid.

(2) The lien shall be either perpetuated and foreclosed or nullified in the judgment in any action to determine its validity. If the lien is perpetuated and foreclosed no further action or notice relevant to the judgment is necessary and the notice or notices of state tax lien already on record continue. If the lien is nullified to any extent by the judgment, then a certified copy of the judgment may be filed with the recorder where the notice of lien is filed and be recorded in the same manner as a release by the Comptroller. Nothing herein shall be construed to require that the liens provided for by this Title must be foreclosed by a judgment of a court, but any authority for collection of any taxes due under this Title which may be provided by law is expressly recognized as a cumulative remedy.

(3) Execution, order of sale and other process for its enforcement may be issued on the judgment at any time.

(4) Judgments perpetuating and foreclosing tax liens may be transferred and assigned for the amount of the taxes covered. They may also be reassigned by any subsequent holder. The transfer shall be filed, recorded, and the judgment released in the same manner as liens before judgment. The

assignee shall be fully subrogated to and succeed to all rights, liens, and remedies of the State, providing proper notice as above required in Section 1(1)(h)(i). [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 201, ch. 104, § 3, eff. May 5, 1961; Acts 1969, 61st Leg., p. 2341, ch. 792, § 4, eff. Jan. 1, 1970.]

Sections 1 and 2 of the act of 1969 amended art. 1.07. Section 3 amended art. 1.07A. See, also, notes under art. 1.07.

### Art. 1.07C. Uniform Federal Tax Lien Registration Act

#### Notices of Liens; Filing

Sec. 1. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the county clerk of the county in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the county clerk of the county where the taxpayer resides at the time of filing of the notice of lien.

#### Certification of Notices of Liens; Filing

Sec. 2. Certification by the Secretary of the Treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

#### Duties of Filing Officer

Sec. 3. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in Subsection (b) is presented to the filing officer and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of Subsection (d) of Section 9.403, of the Uniform Commercial Code as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in Section 1 of this Act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, non-attachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or non-attachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal tax lien referred to in Subsection (a) or any of the certificates or notices referred to in Subsection (b) is presented for filing with any other filing officer specified in Section 1, he shall permanently attach the refiled notice of the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after the effective date of this Act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is \$1. Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of \$1 per page.

#### Fees

Sec. 4. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

- (1) for a notice of tax lien, \$2;
- (2) for a certificate of discharge or subordination, \$1;
- (3) for all other notices, including a certificate of release or non-attachment, \$1.

#### Construction of Act

Sec. 5. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. The fees specified under the provisions of this Act for filing and indexing a notice of lien or certificate or notice affecting a tax lien shall be assessed in lieu of fees for such filing and indexing provided in Article 3930, Revised Civil Statutes of Texas, 1925, as amended.

#### Citation of Act

Sec. 6. This Act may be cited as the Uniform Federal Tax Lien Registration Act.

## Effective Date

Sec. 7. This Act shall take effect January 1, 1972.

[Acts 1971, 62nd Leg., p. 1865, ch. 551, eff. Jan. 1, 1972.]

**Art. 1.08. Certified Claim as Evidence**

If any person, firm, corporation, or association of persons engaging in or pursuing any occupation on which, under the laws of this State, an occupation tax is imposed, who fails or refuses to pay such tax, and it becomes necessary to intervene in any manner for the establishment or collection of said tax claims or penalties, a claim showing the amount of tax due the State, certified to by the Comptroller of Public Accounts or his chief clerk, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said claim may be shown.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 1.09. Levy by Cities and Counties**

No city, county or other political subdivision may levy an occupation tax levied by this Act unless specifically permitted to do so by the Legislature of the State of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 1.10. Rules and Regulations, Civil Penalty**

The Comptroller of Public Accounts shall have the power and authority to make and publish rules and regulations, not inconsistent with any existing laws or with the Constitution of this State or of the United States, for the enforcement of the provisions of this Title and the collection of revenues hereunder.

Forfeiture for violation of rules and regulations. If any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts or violate the same, he shall forfeit to the State the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 1.11. Tax Credits**

(1) This Article applies to any occupation, excise, gross receipts, franchise, license or other privilege tax or fee collected or administered by the Comptroller of Public Accounts. It does not apply to the state ad valorem tax.

(2) When the Comptroller determines that any person, firm or corporation has through mistake of law or fact overpaid the amount due the state on any tax collected or administered by the Comptroller, the Comptroller may with the consent of the

taxpayer credit the person, firm or corporation overpaying the tax with the amount of such overpayment.

(a) Consent by a person, firm or corporation to accept a tax credit under this Article constitutes an irrevocable election and a waiver of any further claim or cause of action for the overpayment credited.

(b) Overpayments shall be credited only to liability for the same tax overpaid, and for penalties and interest due the state for late or insufficient payments of the same tax.

(c) Credits shall not include any interest on the amount overpaid nor shall credits bear any interest after issuance.

(d) Credits for overpayment issued by the Comptroller may be assigned in their entirety only and under such rules and regulations as may be prescribed by the Comptroller.

(e) Credits issued expire at the end of ten (10) years from the date of issuance by the Comptroller. At the end of this ten (10) years any outstanding balance credited but not set off against tax liability including any penalties or interest is automatically cancelled. Cancellation extinguishes the outstanding balance as an obligation of the state and no suit may be brought under this or any other law to collect the outstanding balance.

(f) The Comptroller shall keep a public record of credits issued. He may prescribe rules and regulations for the administration of this Article.

(3) This Article is cumulative of all other laws concerning the payment of taxes, and does not affect the provisions of Acts, 1933, 43rd Legislature, Chapter 214, as amended (codified as Article 1.05 of this Chapter) concerning the payment of taxes under protest.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 1187, ch. 550, § 1, eff. Aug. 30, 1965.]

**Art. 1.11A. Tax Refunds**

(1) This Article applies to any occupation, excise, gross receipts, gross production (as levied by Article 6032, Title 102, Revised Civil Statutes of Texas, 1925, as amended), franchise, license or other privilege tax or fee collected or administered by the Comptroller of Public Accounts. It does not apply to the State ad valorem tax nor to refunds for nontaxable use of any motor fuel or special fuels.

(2) When the Comptroller determines that any person, firm or corporation has through mistake of law or fact overpaid the amount due the State on any tax collected or administered by the Comptroller, the Comptroller may refund such overpayment by warrant on the State Treasury from any funds appropriated for such purpose.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1018, ch. 447, § 1, eff. July 1, 1967; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 4, § 2, eff. Oct. 1, 1969.]

Sections 2 and 3 of the act of 1967 provided:

"Sec. 2. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 3. Effective date. This Act shall be effective July 1, 1967."

For effective date, severability and emergency clauses of Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, see note under art. 1.031.

#### Art. 1.12. False Reports and Returns—Abolition of Oaths

Any person who willfully makes or subscribes any report, return or claim required or permitted to be filed with the Comptroller by the provisions of this Title 122A, knowing that such report, return or claim is false or untrue in any material fact; or who willfully aids or assists in, or procures, counsels or advises the preparation or presentation of any such report, return or claim which is fraudulent, false or incorrect as to any material matter knowing same to be false; or who knowingly and willfully simulates or falsely or fraudulently executes or signs any such report, return or claim; or who knowingly and willfully procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for not less than two (2) years nor more than five (5) years or by a fine of not more than One Thousand Dollars (\$1,000.) or by both such fine and imprisonment.

Provided that if any penalties prescribed elsewhere in this Title overlap as to offenses which are also punishable under this Article, then the penalties prescribed by this Article shall apply and control all other penalties.

Provided further, that from and after the effective date of this Act no report, return, declaration, claim for refund or other document required or permitted to be filed with the Comptroller under this Title 122A, shall be required to be under oath, verification, acknowledgment or affirmation.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 178, ch. 95, § 1, eff. April 27, 1961.]

#### Art. 1.13. Timely Filing of Reports

(a) Any report, required by any provision of this Title to be filed or made on or before a specific date shall be deemed timely filed if said report, shall be placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the Comptroller of Public Accounts on or before the date required for such payment, report, annual report, return, declaration, statement, or document to be filed or made.

(b) The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such report was deposited with the post office or the carrier. The person making the report or the Comptroller may show by competent evidence that the actual date of posting was to the contrary.

(c) The person making the report shall be deemed to have substantially complied with the filing re-

quirements as to timeliness if he exercised reasonable diligence to comply and through no fault of his own the reports were not timely filed.

(d) If the report is filed within ten (10) days after the due date and as originally filed shows the correct amount of taxes due, no assessment for penalties and interest will be made solely on the grounds of late filing after the lapse of ninety (90) days immediately following the date the report was required to be filed.

(e) If the due date falls on a Saturday, Sunday, or legal holiday, the next business day thereafter will be considered to be the due date.

(f) The term "report" shall include any payment, report, annual report, return, declaration, statement or other document required by any provision of this Title to be filed with the Comptroller.

(g) The Comptroller is hereby authorized to refund or issue credits for penalties and interest paid solely as a result of returns timely mailed but post-marked after the required filing date; provided, however, that no refund or credit shall be allowed for such penalties incurred prior to September 1, 1961, the original effective date of this Article.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 1, eff. Sept. 1, 1961; Acts 1967, 60th Leg., p. 523, ch. 227, § 1, eff. May 19, 1967.]

#### Art. 1.14. Injunction

(a) In this Article, "person" means any individual, firm, copartnership, agency, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, cooperative, assignee, any entity, or any other group or combination acting as a unit, and their successors, administrators, executors, and representatives.

(b) Every person engaged in any business pursuant to which he or it may receive, collect or withhold any money which has been paid or withheld as a tax imposed by the provisions of this Title who shall fail to file the reports or to pay any such tax or taxes, as required by this Title, may be enjoined by a suit brought by the Attorney General from continuing in such business until such report or reports are filed and such tax or taxes are paid. Venue of any such suit or injunction is hereby fixed in Travis County, Texas.

(c) In all cases in which the Comptroller determines that any tax due under this Title is insecure he shall require of any taxpayer that is delinquent in one or more tax remittances a cash deposit, a good and sufficient surety bond or other security as a condition for said taxpayer to continue in business and/or obtain or retain any permit issued pursuant to any provisions of this Title. The security shall be in such amount and in such form as the Comptroller deems necessary, except that it shall not exceed double the amount of taxes which he estimates will be due by such taxpayer during the succeeding 12-

month period. Failure to furnish such security within ten (10) days after demand therefor will authorize the Comptroller to bring suit in Travis County, Texas, to enjoin the taxpayer from continuing in business until such security is furnished to the Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1818, ch. 699, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2441, ch. 817, § 1, eff. June 14, 1969.]

**Art. 1.15. Admission of Reproduced Documents into Evidence**

Where the Comptroller of Public Accounts or his deputy or employee in the performance of the function of his office has kept or recorded any memorandum, document, entry, or report, or has kept or recorded any information contained in such memorandum, document, entry or report, or otherwise recorded any action taken by him, and has caused the same to be copied or reproduced by any photographic, photostatic, microfilm, magnetic or other process which accurately reproduces or forms a durable medium for so reproducing the original or information contained therein, such reproduction shall be, so far as relevant, admitted without further proof in any judicial or administrative proceeding in respect to the enforcement or administration of any tax imposed by this Title as evidence of the matters stated in such reproduction.

The existence, nonexistence, availability or unavailability of the original shall not affect the admissibility of the reproduction; provided that the original or other competent evidence is admissible in evidence to show the incorrectness of the reproduction or any information reflected thereon.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 4, § 4, eff. Oct. 1, 1969.]

For effective date, severability and emergency clauses of Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, see note under art. 1.031.

**CHAPTER 2. POLL TAX**

**Art. 2.01. Poll Tax**

There shall be levied and collected from every person between the ages of twenty-one and sixty years on the first day of January of each year and resident within this state on that date, an annual state poll tax of one dollar and fifty cents, one dollar of which shall be for the benefit of the free schools and fifty cents for general revenue purposes; provided, however, that the fifty-cent portion of the tax for general revenue purposes shall not be levied and collected from persons insane or blind, those who have lost a hand or foot, those permanently disabled, and disabled veterans of foreign wars where such disability is forty per cent or more, or from members of the active militia of this state who are exempt therefrom under the provisions of Article 5840 and 5841 of the Revised Civil Statutes of Texas, 1925. The tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. The tax shall be paid at any time between the first day of October and the thirty-first day of

January following, both dates inclusive, and shall be paid in the county in which the taxpayer resides at the time of payment; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. No county shall levy a poll tax; but each county may levy a fee of not more than twenty-five cents for collecting the state poll tax, such fee to be paid to the tax collector at the time the poll tax is paid. Except as otherwise provided in Section 75 of the Election Code of Texas (Article 7.10, Vernon's Texas Election Code), the county fees shall be deposited in the county treasury for general revenue purposes of the county and shall not be deemed to be fees of office or be retained by the tax collector, regardless of whether the tax collector is compensated on a fee basis or on a salary basis.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 21, eff. Aug. 23, 1963.]

**Savings Provision**

*Acts 1963, 58th Leg., p. 1103, ch. 430, § 4, which repealed V.A.T.S. Election Code, articles 5.09 to 5.24, relating to the poll tax, further provided that the repeal of article 5.09 should not affect liability for payment of a poll tax or the continued existence and force of this article.*

**Abolition of Constitutional Authority for Tax as Qualification for Voting**

*The provision of Const. art. 6, § 2, which required of non-exempt persons payment of the poll tax in order to be qualified electors, was replaced in 1968 by a requirement for annual registration.*

**CHAPTER 3. TAX ON PRODUCERS OF NATURAL GAS**

**Article**

- 3.01. Calculation of Tax.
- 3.02. Market Value.
- 3.03. Records and Payment.
- 3.04. Definitions.
- 3.05. Liability for Tax; Payment.
- 3.06. Verifying Reports; Investigations, Rules and Regulations.
- 3.07. Delinquent Taxes.
- 3.08. Penalty for Violation; Lien; Suits.
- 3.09. Suit to Collect Tax; Report or Audit as Evidence, Report of Transfer.
- 3.10. Removal of Gas; Report of Transfer.
- 3.11. Dedicated Reserve Tax.
- 3.12. False Entries; Destroying or Secreting Records.

**Art. 3.01. Calculation of Tax**

(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to seven and one-half per cent (7½%) of the market value thereof as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than  $\frac{121}{1500}$  of one cent (1¢) per one thousand (1,000) cubic feet.

(2) In calculating the tax herein levied, there shall be excluded:

- (a) gas injected into the earth in this State, unless sold for such purpose;
- (b) gas produced from oil wells with oil and lawfully vented or flared;
- (c) gas used for lifting oil, unless sold for such purposes.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, eff. Oct. 1, 1969.]

Section 9 of the Acts 1931, 42nd Leg., ch. 73, read as follows: "The first tax required to be paid hereunder shall be due October 25, 1931, computed and estimated on gas produced during the quarter next preceding, to-wit: July, August and September."

Section 10 repealed in part Civil Statutes, art. 6060.

Section 16 makes the provisions separable and provides if any provision is held invalid, such decision shall not affect the remainder.

For effective date, severability and emergency clauses of Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, see note under art. 1.031.

### Art. 3.02. Market Value

(1) The market value of gas produced in this State shall be the value thereof at the mouth of the well; however, in case gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments made by purchasers to producers for the purpose of reimbursing such producers for taxes due hereunder shall not be considered a part of the producer's gross cash receipts. In all cases where the whole or a part of the consideration for the sale of gas is a portion of the products extracted from the producer's gas or a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including any bonus or premium; provided that notwithstanding any other provision herein to the contrary, where gas is processed for its liquid hydrocarbon content and the residue gas is returned by cycling methods, as distinguished from repressuring or pressure maintenance methods, to some gas producing formation, the taxable value of such gas shall be three-fifths ( $\frac{3}{5}$ ) of the gross value of all liquids extracted, separated and saved from such gas, such value to be determined upon separation and extraction and prior to absorption, refining or processing of such hydrocarbons and such value prior to refining shall be the value of the highest posted price of crude oil in the field where said gas is produced or in the nearest oil field in the event no oil is produced in said field and the quantity of the products shall be measured by the total yield of the processing plant from such gas.

(2) All condensate recovered from gas shall be taxed at the same rate as oil and shall be valued for the purpose of computing the tax due thereon at the prevailing market price for condensate in the general area where the same is recovered. The term "condensate" shall include all liquid hydrocarbons that are or can be recovered from gas by means of a separator but shall not include any liquid hydrocarbons which can only be recovered from gas by re-

frigeration or absorption and separated by a fractionating process.

Where additional liquid hydrocarbons other than condensate are recovered from gas the taxable value of such additional liquid hydrocarbons shall be determined by deducting from the total receipts of the producer for all liquid hydrocarbons recovered from his gas the taxable value assigned to the condensate and the applicable rate set forth in sub-section (1) of Article 3.01 shall be applied to the difference to determine the tax due hereunder on such additional liquid hydrocarbons.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

### Art. 3.03. Records and Payment

(1) The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of each such producer to keep accurate records in Texas of all gas produced, making monthly reports as hereinafter provided.

(2) The purchaser of gas shall pay the tax on all gas purchased and deduct the tax so paid from the payment due the producer or other interest holders, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer; such moneys so deducted from payments due producers for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Act; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased.

(3) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each such producer shall make and deliver to the Comptroller a report on forms prescribed by the Comptroller showing the gross amount of gas produced, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the first purchaser of said gas, and such other information as the Comptroller may desire; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. In no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in the event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such a purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment and shall be enti-

tled to reasonable attorney's fees and court costs incurred by legal action.

(4) Provided that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of such tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due.

(5) The tax herein levied shall be borne ratably by all interested parties, including royalty interests; and producers and/or purchasers of gas are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due and remit the same to the Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 3, eff. Sept. 1, 1961.]

#### Art. 3.04. Definitions

(1) For the purpose of this Act "producer" shall mean any person owning, controlling, managing, or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any gas or its value whether produced by him, or by some other person on his behalf, either by lease, contract, or otherwise.

(2) "First purchaser" shall mean any person purchasing gas from the producer.

(3) "Subsequent purchaser" shall mean any person who purchases gas for any purpose whatsoever, when said gas is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting gas or any instrumentality that may now be used or come into use for such purpose.

(5) "Gas" shall mean natural and casinghead gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate and/or condensate, or other products.

(6) The term "sweet gas" shall mean all natural gas except sour gas and casinghead gas.

(7) The term "sour gas" shall mean any natural gas containing more than one and one half (1½) grains of hydrogen sulphide per hundred (100) cubic feet, or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet.

(8) The term "casinghead gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(9) "Report" shall mean any report required to be furnished in this Act or that may be required by the Comptroller in the administration of this Article.

(10) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(11) "Production" or "total gas produced" shall mean the total gross amount of gas produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Article shall be measured or determined by meter readings showing one hundred per cent (100%) of the full volume expressed in cubic feet.

(12) For the purposes of this Chapter, the term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas (including natural and casinghead) contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(13) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest is that of the person having the management and operation of the well.

(14) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 3.05. Liability for Tax; Payment

(1) The tax herein imposed on the producing of gas shall be the primary liability of the producer as hereinabove defined, and every person purchasing gas from producer thereof and taking delivery thereof at or near the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending lawsuit in the State of Texas or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or the University of Texas and any gas producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any taxpaying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by

such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the persons primarily liable therefor.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 3.06. Verifying Reports; Investigations, Rules and Regulations

The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Chapter, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any person, subject to a tax under this Chapter, and to secure any other information directly or indirectly concerned in the enforcement of this Chapter, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Chapter, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Chapter is made, one half (½) of one (1) per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Chapter and so much of the said proceeds of one half (½) of one (1) per cent of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby appropriated for such purpose, subject however to appropriation by the Legislature. At the close of each State fiscal year unspent appropriations for enforcement purposes shall revert to the funds to which the net proceeds of the tax levied herein are paid and in the same proportions.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 3.07. Delinquent Taxes

In the event any person engaged in the business of producing any gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to

enjoin such person from producing gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 3.08. Penalty for Violation; Lien; Suits

Any person, firm, association or corporation shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for failure or omission to keep the records required herein, or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interests on all property and equipment used by the producer of gas in his business of producing gas, and if any producer of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the producer of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the General Revenue Fund of the State. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 253, ch. 129, § 1, eff. Aug. 28, 1961.]

*Section 2 of the amendatory act of 1961 provided: "Sec. 2. The Natural and Casinghead Gas Audit Fund, No. 73, is hereby abolished and all cash assets remaining in that Fund on the effective date of this Act shall be transferred to the General Revenue Fund of the State within thirty (30) days of the effective date of this Act."*

#### Art. 3.09. Suit to Collect Tax; Report or Audit as Evidence, Report of Transfer

(1) If any producer or purchaser of natural and/or casinghead gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer

or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided, further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 3.10. Removal of Gas; Report of Transfer

(1) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any natural and/or casinghead gas from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Chapter.

(2) Whenever any lease producing natural and/or casinghead gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Chapter. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver formerly owning and/or operating said lease.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 3.11. Dedicated Reserve Tax

##### (1) Declaration of Policy.

It is the policy of this State to obtain, as near as may be consistent with a fair and equitable tax policy, a tax return to the State of not less than one cent (1¢) per MCF on each MCF of natural gas produced and saved from the earth and waters of this State. The same is deemed necessary:

I. to derive a reasonable State revenue from the trillions of cubic feet of gas removed from the earth and waters of the State each year, and

II. to tax equitably all of those persons integrally engaged in the occupation of removing such gas, so that one associated group of them will not derive a windfall by virtue of a very small tax burden on each thousand cubic feet of gas produced by such others.

It is further the policy of this State, in order to promote conservation and to distribute equitably the burden of natural resources taxation, to recognize and clarify fully by statute the relation between various persons engaged in the occupation of producing natural gas so that the taxpayer in each instance may be identified clearly, and so that all persons so engaged in the occupation of production will bear equitably the taxes imposed in connection with the severance of gas from Texas soil.

Pursuant to this policy it is recognized that contractual relations exist in such natural gas production occupation between several definable groups, all engaged integrally in such occupation of severance of natural gas from the soil and all having such a direct and beneficial interest in the production of gas that for the purpose of taxation they may be classified as producers of gas. It is the policy of the State of Texas to recognize that all such persons, integrally engaged in the occupation of severance of natural gas from the soil-producers, severance producers and dedicated reserve producers, have a taxable interest in production of gas in Texas.

##### (2) Definitions.

The definitions contained in Article 3.04, insofar as applicable, shall govern the meanings of the terms used in this Article. In addition, the following definitions are specifically applicable to this Article:

(a) "Severance producer" means any person owning, controlling, managing or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters of this State, and shall include any person owning any royalty or other interest in gas or its value, whether produced by him, or by some other person in his behalf, either by lease or contract or otherwise, when such person producing gas is in contractual relation with the dedicated reserve producer (either directly, or, if a royalty or other holder of an interest in gas in place and thereby entitled to a fractional share of the value of such gas in place, indirectly through the producer).

(b) "Dedicated reserve producer" means any person holding a written contract for a designated term specified therein which confers upon such person the right to take title to gas from particular lands, leases and reservoirs in this State and imposes upon a severance producer the duty to supply all or a designated quantity or portion of gas produced by that severance producer (or by that severance producer in conjunction with other severance producers) to the dedicated reserve producer at a fixed or determinable price.

(c) "Severance beneficiary" has the following meaning:

I. In the case where there is in effect a dedicated reserve contract as to the gas in question, the term "severance beneficiary" refers to the dedicated reserve producer.

II. In the case where there is no dedicated reserve contract in effect as to the gas in question, the term "severance beneficiary" refers to the producer.

(d) "Dedicated reserve contract" means any written contract for a designated term specified therein which confers upon a dedicated reserve producer the right to take title to gas from particular lands, leases and reservoirs in this State, and imposes upon a severance producer the duty to supply all or a designated quantity or portion of gas produced by that severance producer (or by that severance producer in conjunction with others) to the dedicated reserve producer at a fixed or determinable price.

(e) I. Meaning of Residue Gas.

A. As to gas from which liquefiable hydrocarbons are removed, "residue gas" means that constituent part of the whole quantity of gas removed from the earth and waters of this State which eventually constitutes the residue. The tax is applicable under the terms of this Article to such constituent part of the whole quantity of gas at the time when it, along with the associated gasoline or other liquefiable hydrocarbons, is actually severed from the earth and waters of this State.

B. As to gas from which liquefiable hydrocarbons are not removed, "residue gas" means the entire quantity except that gas which is:

(i) injected into the earth, unless sold for such purpose;

(ii) produced from oil wells with oil and fully vented or flared; or

(iii) used for lifting oil, unless sold for such purpose.

II. How Measured. Such residue gas shall be measured by determining that portion of gas containing gasoline or other liquefiable hydrocarbons (that are to be removed or extracted at a plant by scrubbing, absorption, compression, or any other process) which is left after the application of such process and which flows through the outlet of such plant. In the event that such gas is processed in more than one such plant, the residue gas content shall be measured as that portion of the gas which flows through the outlet of the first plant.

As to that gas which passes through a separator and which is not processed in a plant to remove or extract the gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remain-

ing after its passage through such separator. In the event that such gas passes through more than one separator, the residue gas content shall be measured as that gas remaining after the passage through the first separator.

As to that gas which passes through a drip or trap and which does not pass through a separator and which is not processed in a plant to remove or extract gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after passage through such drip or trap. In the event that such gas passes through more than one drip or trap, then the residue gas content shall be measured as that portion of the gas remaining after its passage through the last drip or trap.

As to that gas which passes through a meter and which does not pass through a drip or trap and which does not pass through a separator and which is not processed in a plant to remove or extract the gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after it passes through such meter. In the event that such gas passes through more than one meter, then the residue gas content shall be measured as that gas which passes through the first meter.

(f) "MCF" means thousand cubic feet.

(3) The Tax Herein Levied.

(a) There is hereby levied, in addition to all other occupation taxes on the occupation of producing gas in Texas, an occupation tax on the business or occupation of producing gas within this State as a severance beneficiary at the rate of one cent (1¢) per thousand cubic feet of residue gas produced, applicable at the time the said gas is severed from the earth or waters of this State, less the amount of tax paid per MCF under the provisions of Article 3.01 of this Chapter, computed in the following manner:

In the case of all gas subject to the tax imposed by Article 3.01 there shall be ascertained the amount of tax in cents and fractions of a cent per thousand cubic feet paid to the State with respect to each quantity of such gas by virtue of the seven per cent (7%) of value tax provided in that Article. If such amount is less than one cent (1¢) per MCF, then there shall be determined the difference between such amount and one cent (1¢) per MCF. Such amount multiplied by the quantity of the residue gas in question shall constitute the tax obligation of the severance beneficiary of such residue gas.

(b) The above is subject to the following exceptions:

(1) Without regard to any other provision of this Chapter, no producer producing natural gas from a newly discovered field shall

be required to pay more than the seven per cent (7%) of the market value of gas therefrom produced until establishment of the first field rules for such field by the Railroad Commission or until the passage of six (6) months from the date of the first discovery of natural gas in such field, whichever time shall be the shorter.

(2) Without regard to any other provision of this Chapter, no producer or royalty owner of natural gas shall be required to pay more than the obligation provided under Article 3.01 of this Chapter unless he is also the severance beneficiary by virtue of selling such gas without a dedicated reserve contract.

(3) Without regard to any other provision of this Chapter no person or persons operating one or more gasoline plants, shall, in respect to the residue gas after processing in said plants, be liable for any tax hereunder.

#### (4) Collection of Tax.

(a) The tax hereby levied shall be a liability of the severance beneficiary. It shall be his duty to keep accurate records of all gas produced and all matters reasonably necessary or pertinent, as determined by the Comptroller, for the calculation and collection of the tax. The severance beneficiary shall remit the tax additionally levied by this Article. The tax levied herein shall be due and payable at the office of the Comptroller of Public Accounts at Austin on the last day of the calendar month based on the amount of gas produced during the preceding calendar month. Each person liable for the tax imposed herein shall make and deliver to the Comptroller a verified report on forms furnished by the Comptroller showing such information as the Comptroller may deem necessary for the administration and enforcement of this Article. Such report shall be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

(b) The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers, including severance producers and dedicated reserve producers, to determine whether the tax is being properly reported and paid. He or they shall have the power to enter on the premises of any taxpayer liable for a tax under this Act and any other premises necessary in determining the correct tax liability, and to examine any books or records and to secure any information directly or indirectly concerned, according to law, and to promulgate rules pertinent to the enforcement of this Article which rules shall have the effect of law. Before any division or allotment of the tax collected hereunder is made, five-tenths per cent

(.5%) of the gross amount of that tax shall be set aside in the State Treasury for the use of the Comptroller in the administration and enforcement of this Article; and so much of the said proceeds of a five-tenths per cent (.5%) of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby set aside for such purposes, subject to appropriation by the Legislature.

(c) In the event that any taxpayer liable for a tax under this Act shall not file a report, the Attorney General shall have the right to enjoin such person until the delinquent tax is paid or said reports are filed, and venue is hereby fixed in Travis County.

(d) All persons having an obligation imposed by this Article shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for violation hereof, each day's violation constituting a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interest on all property used by them or in their business of producing or purchasing gas, and if any of them shall fail to remit the proper taxes, penalties and/or interest due, the Comptroller may employ personnel to ascertain the correct amount due, and the person violating any of the provisions of this Article shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due for the enforcement of all liens under this Article.

(e) The provisions of Article 3.09 of this Chapter shall also be applicable to the enforcement of the provisions of this Article, and where the terms "producer" or "purchaser" are used in that Article, they shall be construed to be broad enough to include "severance producer" and "dedicated reserve producer," as the case may be.

#### (5) Allocation of Revenue.

(a) The revenue derived under the provisions of this Article shall be allocated in the following manner:

I. Five-tenths percent (.5%) for administration and enforcement as hereinabove provided;

II. One-fourth ( $\frac{1}{4}$ ) of the net revenue shall be allocated to the Available School Fund;

III. The remaining three-fourths ( $\frac{3}{4}$ ) shall be deposited in the Omnibus Tax Clearance Fund and shall be set aside for the purpose of transfer and allocation from the Omnibus Tax Clearance Fund to the Medical Assistance Fund as provided by

Section 2 of Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended, it being specifically provided that no portion of the revenues deposited to the Omnibus Clearance Fund by virtue of this Act shall be distributed or allocated to any other fund under the provisions governing the Omnibus Clearance Fund unless the needs of the Medical Assistance Fund have been met fully.

(b) "Revenue derived under the provisions of this Act" as used in this Section means such revenue as may be added by virtue of the provisions of this Article 3.11 to that revenue which would otherwise be obtained under other provisions of law.

(6) In case two (2) or more persons pay under protest challenging the constitutionality of any portion of this Article, the Attorney General shall, within thirty (30) days after the filing of the second protest, institute a suit for declaratory judgment in the District Court of Travis County, Texas. In order to expedite the decision in such case or cases, and also in suits filed by taxpayers under Article 1.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, any such cases involving the constitutionality of any portion of this Act shall be advanced to the top of the docket of any District or Appellate Court in which the cases might be filed or appealed.

(7) The provisions of this Article are hereby declared to be nonseverable; and if this Article or any portion thereof is declared invalid by a final judgment of a court of competent jurisdiction as to any severance beneficiary, it shall be invalid from the beginning as to the producer and all other severance beneficiaries. The provisions of this Article shall prevail over the provisions of the general severability clause at the end of this Act.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VI, § 1, eff. Sept. 1, 1961.]

### Art. 3.12 False Entries; Destroying or Secreting Records

Whoever shall, as a producer or purchaser or as agent or representative of a producer or purchaser, knowingly make any false entries or fail to make any proper entries in the books required by this Article with intent to defraud the State; or whoever, as such, shall knowingly make a false or incomplete report as required by the provisions of this Article; or whoever, as such, shall knowingly fail or refuse to make the report required to be made; or whoever, as such, shall destroy, mutilate, or secrete any of the records required to be kept by the provisions of this Article; or whoever shall, as such, hide or secrete with intent to defraud, any of the property upon which a lien is created hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum of not less than One Hundred Dollars (\$100), nor more than One Thousand Dollars (\$1,000), or be confined in the county

jail not more than twelve (12) months, or by both such fine and imprisonment.

In addition thereto, such producer or purchaser or agent thereof shall forfeit to the State of Texas, for any said offense or the violation of any of the provisions hereof, or any rule or regulation, a penalty of One Thousand Dollars (\$1,000) for each such offense to be recovered by the Attorney General in a civil suit in the name of the State of Texas; and the venue of such suit is hereby fixed in the county in which the offense occurs, and such suit may be brought separately or joined and made a part of any one civil suit provided for by this Article. The penalties prescribed in this Section, both Criminal and Civil, are in addition to any and all other penalties prescribed in this Article.

[Acts 1931, 42nd Leg., p. 111, ch. 73, § 7; Acts 1941, 47th Leg., p. 269, ch. 184, Art. II, § 1.]

## CHAPTER FOUR. OCCUPATION TAX ON OIL PRODUCED

### Article

- 4.01. Definitions.
- 4.02. Amount and Computation of Tax.
- 4.03. Primary Liability; Mode of Payment; Refunds, Penalties.
- 4.04. Records and Reports.
- 4.05. Purchasers to Deduct Tax.
- 4.06. Reports to Comptroller.
- 4.07. Prior Lien of State for Taxes; Penalties and Interest.
- 4.08. Collection of Delinquent Taxes, Venue, Evidence.
- 4.09. Unlawful Removal of Oil From Lease.
- 4.10. Lease Transfers Noted on Reports.
- 4.11. Duties of Comptroller.
- 4.12. False Entries and Other Unlawful Acts.
- 4.13. Interfering with Inspector.
- 4.14. Measuring Oil or Gas.

### Art. 4.01. Definitions

(1) For the purpose of this Chapter "producer" shall mean any person owning, controlling, managing or leasing any oil well and/or any person who produces in any manner any oil by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any oil or its value whether produced by him, or by some other person on his behalf, either by lease, contract or otherwise.

(2) "First purchaser" shall mean any person purchasing crude oil from the producer.

(3) "Subsequent purchaser" shall mean any person operating any reclamation plant, topping plant, treating plant, refinery, and/or any kind or character of processing plant, or anyone who purchases oil for any purpose whatsoever, when said oil is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting oil or any instrumentality that may now be used or come into use.

(5) "Oil" shall mean crude oil, or other oil taken from the earth, regardless of gravity of the oil.

(6) "Report" shall mean any report required to be furnished in this Chapter or that may be required by

the Comptroller in the administration of this Chapter.

(7) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(8) "Production" or "total oil produced" shall mean the total gross amount of oil produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Article shall be measured or determined

(a) by tank tables compiled to show one hundred percent (100%) of the full capacity of the tanks without deductions for coverage or losses in handling or

(b) by meter or other measuring device which accurately determines the volume of "production" or "total oil produced."

Allowances for any reasonable and bona fide deduction for basic sediment and water, and for correction of temperature to sixty degrees (60°) Fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank table compiled to show less than one hundred percent (100%) of the full capacity of tanks, then such amount shall be raised to a basis of one hundred percent (100%) for the purpose of the tax imposed by this Chapter.

(9) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest, is that of the person having the management and operation of the well.

(10) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(11) "Commission" shall mean the Railroad Commission of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 1136, ch. 441, § 1, eff. Aug. 23, 1963.]

#### Art. 4.02. Amount and Computation of Tax

(1) There is hereby levied an occupation tax on oil produced within this state of four and six-tenths cents (4.6¢) per barrel of forty-two (42) standard gallons. Said tax shall be based upon the total barrels of oil produced or salvaged from the earth or waters of this state without any deductions and shall be computed (a) by tank tables showing one hundred percent (100%) of production and exact measurements of contents or (b) by meter or by other measuring device which accurately determines the volume of "production" or "total oil produced." Provided, however, that the occupation tax herein levied on oil shall be four and six-tenths percent (4.6%) of the market value of said oil whenever the market value thereof is in excess of One Dollar (\$1) per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall

be the actual market value thereof plus any bonus or premiums for other things of value paid therefor or which such oil will reasonably bring if produced in accordance with the laws, rules, and regulations of the State of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 1136, ch. 441, § 2, eff. Aug. 23, 1963.]

Acts 1963, 58th Leg., p. 1136, ch. 441, which amended paragraph (8) of article 4.01 and this article, provided in section 3: "Nothing herein shall be construed to permit the use of metering devices for the measurement of oil as set forth above without the express permission of the operator of the well or wells on which such metering device or devices are to be installed."

#### Art. 4.03. Primary Liability; Mode of Payment; Refunds, Penalties

(1) The tax herein imposed on the producing of crude petroleum shall be the primary liability of the producer as hereinbefore defined, and every person purchasing crude petroleum from the producer thereof and taking delivery thereof at the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending law suit in the State of Texas, or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or The University of Texas and any oil producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any taxpaying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and the State shall have a lien on all of the oil produced in Texas in the hands of the producer, the first purchaser and any subsequent purchaser to secure the payment of the tax, and it shall be the duty of every person purchasing oil produced in Texas to satisfy himself or itself that the tax on said oil has been or will be paid by the persons primarily liable therefor.

(5) If the oil produced by said producer is not sold during the month in which it is produced, then said producer shall pay the tax at the same rate and in the same manner as if said oil were sold during said

month. In such case, however, the working interest operator may pay such tax and deduct it from the interest of the other interest holders.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties the proportionate tax due.

(7) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports as hereinafter provided.

(8) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said oil were sold.

(9) The tax levied herein shall be paid monthly on the twenty-fifth day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorneys fees and court costs incurred by such legal action.

(10) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of such tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 4, eff. Sept. 1, 1961.]

#### Art. 4.04. Records and Reports

(1) A complete record shall be kept by every producer of oil within this State, said records to show the county or counties in which said producer operates, the correct name or names of the lease or leases from which oil is produced, the total number of barrels of oil produced from each lease, the correct name and address of the first purchaser, the total number of barrels of oil sold or delivered to

each first purchaser and the price received therefor. And in addition shall keep a record of all oil used on the lease from which said oil is produced or which may be refined or processed in any manner by the producer upon the lease from which said oil is produced; and if said oil is not sold, the location of storage and the total number of barrels in storage, if owned by such operator, or if stored with a pipe line or a refinery, the correct name and address of such pipe line or refinery.

(2) Every producer shall file monthly on the twenty-fifth day of each month with the Comptroller under oath of the producer or his duly authorized agent a report showing the total number of barrels of oil produced by said producer during the month preceding the date of the report, the county in which the oil is produced, the correct name of the lease from which the oil is produced, the correct name and address of the first purchaser of said oil and the price received therefor, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(3) Every first purchaser shall keep in Texas records showing the correct name and address of the producer from whom said first purchaser buys oil, the county in which said oil is produced, the true and correct name of the lease from which said oil is produced, the total number of barrels bought, and the price paid therefor; and in addition shall keep a record showing the total number of barrels of said oil so purchased and used, refined, or processed in any manner by said first purchaser and the total number of barrels of oil sold by him, the price received therefor, and the true and correct name and address of the subsequent purchaser of said oil. On the twenty-fifth day of each month each and every first purchaser of oil shall file with the Comptroller, under oath of the first purchaser or his duly authorized agent, a report showing the total number of barrels of oil purchased during the preceding month, the price paid therefor, the correct name and address of the producer or producers from whom said oil was purchased, the county in which the oil was produced, and the correct name of the lease from which said oil was produced, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller and/or Attorney General or their duly authorized agents.

(4) Each and every subsequent purchaser, shall keep in Texas a record showing the correct name and address of each first purchaser or subsequent purchaser from whom any oil is bought, the total number of barrels purchased and the price paid therefor, the date of purchase, the disposition of said oil, the total number of barrels used, refined, or processed in any manner by said subsequent purchaser, and if sold shall show the correct name and address of the subsequent purchaser to whom said oil is sold or delivered and the date of said sale and/or delivery, and the price received therefor.

(5) Each and every subsequent purchaser shall file with the Comptroller on the twenty-fifth day of each month a report under oath of the subsequent purchaser or a duly authorized agent showing the correct name and address of the person from whom said subsequent purchaser has bought oil during the preceding month, the total number of barrels purchased, the price paid therefor, and the disposition of said oil; said reports to show the total number of barrels of oil used, refined, or processed in any manner by said subsequent purchaser and the correct name and address of any subsequent purchaser to whom said oil was sold and the number of barrels sold, and the price received therefor; said records and reports shall be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(6) Royalty owners shall only keep a record of all moneys received as royalty from any producing leasehold within this State. They shall also keep a copy of all settlement sheets furnished them by the purchaser or operator or any other statement showing the number of barrels of oil from which royalty was received and the amount of tax deducted; said records shall be open to the inspection of the Comptroller or the Attorney General or their duly authorized agents.

(7) Every carrier, including all railroads, barges, trucks, or pipe lines, carrying or transporting oil for hire, for themselves or their owners, shall keep in Texas a complete and accurate record of all oil so handled by months, showing date received, number of barrels, of whom received, point of delivery, to whom delivered and manner of transportation, and such records shall be open to the inspection of the duly authorized agents of the Comptroller or the Attorney General at all times, and, if requested by the Comptroller, shall furnish information and reports of movements as often as required by the Comptroller; provided however, that nothing in this bill imposing a tax on those enjoying the privilege herein taxed shall be construed as impairing any contract whereby any interest holder or other person has agreed to pay any part of the tax in the past or in the future, but said tax is imposed on all of said interest holders as their interests appear and shall be paid as herein provided, and this Act is not intended to relieve any person of any contractual liability whatsoever.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.05. Purchasers to Deduct Tax

Purchasers buying oil from properties in litigation or in receivership, bankruptcy, or any other legal proceedings, or covered by assignments, are required to deduct the amount of the taxes levied by this Act, before payment is made to the producers, trustees, assignees or to any person who claims ownership of said funds, or before the proceeds of said purchase of oil is impounded or escrowed by said purchaser pending such litigation or tenure of assignments, and

shall remit said tax deducted in the same manner as if said oil had been purchased from any other source, and providing that said purchaser shall not be liable to any claimant of said funds on account of payment of said tax.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.06. Reports to Comptroller

**Payment of Tax.** At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following shall cause said tax to become delinquent and a penalty of five per cent (5%) of the amount of said tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of said tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 5, eff. Sept. 1, 1961.]

#### Art. 4.07. Prior Lien of State for Taxes; Penalties and Interest

(1) For the tax, penalties and interest herein provided for, the State shall have a prior and preferred lien on every leasehold interest, ownership of the oil rights, or the value of oil rights or other interest, including oil produced and oil runs owned by the person owing any tax herein, and in addition thereto such lien shall include equipment, tools, tanks, and all other implements used on said lease from which oil is produced. Said lien shall extend to and be enforceable against any property, either real or personal, or both, owned by any person or persons made liable for the tax herein levied, which property is not exempt from forced sale by reason of existing laws or the Constitution of this State.

(2) It is further provided that when any oil is discovered upon which the tax herein provided for has not been paid as and when provided for herein, any sheriff, ranger or other peace officer is authorized to levy on said oil by notice to the owner or other person in charge, that said oil is levied on for taxes due on it and after ten (10) days notice posted at the site of the oil, said officer shall proceed to sell said oil to the highest bidder for cash. Any money received for said oil in excess of the taxes and ten (10) per cent commission to the officer selling the property, shall be paid by said officer to the owner of said oil. The officer selling same shall transmit the amount of the tax to the Comptroller or his duly authorized representative. Should the oil sold fail to sell for enough to pay said taxes, the officer selling same shall deduct ten per cent (10%) of the amount received and forward the balance to the Comptroller. Provided however, that no ranger shall receive any

commission for services performed in the enforcement of this provision.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.08. Collection of Delinquent Taxes, Venue, Evidence

(1) It shall be the duty of the Attorney General to bring legal action for the collection of delinquent taxes herein levied, and a suit instituted shall attach to oil in storage, in transit, or being produced by such operator, and venue for such suits herein provided shall be in the District Court of Travis County, Texas.

(2) If any producer or purchaser of crude oil, or subsequent purchaser, fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of crude oil produced or purchased on which such tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further that such report or audit may be admitted in evidence only against the party by or for whom it was made.

(3) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; and all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736,<sup>1</sup> Revised Civil Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

<sup>1</sup> Repealed by Rules of Civil Procedure. See, now, Rules Civ.Proc., rule 185.

#### Art. 4.09. Unlawful Removal of Oil from Lease

On notice from the State Comptroller, it shall be unlawful for any person to remove any oil from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

<sup>2</sup> West's Tex.Stats. & Codes—65

#### Art. 4.10. Lease Transfers Noted on Reports

(1) Whenever any lease producing oil changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act.

(2) It further shall be the duty of the new owner or operator of said leases to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver formerly owning and/or operating said lease.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.11. Duties of Comptroller

(1) It shall be the duty of the Comptroller to promulgate rules and regulations governing the detail administration of the terms and requirements of this Chapter not specifically mentioned herein; to employ auditors and supervisors for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. Before any division or allotment of the occupation tax on oil collected under the provisions of this Chapter is made, one half of one per cent ( $\frac{1}{2}$  of 1%) of the gross amount of said tax shall be set aside in the Treasury subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of the said proceeds of one half of one per cent ( $\frac{1}{2}$  of 1%) of the occupation tax on oil paid monthly as may be needed in such administration and enforcement shall be expended in the amounts and for the purposes fixed by the Legislature in the General Appropriation Bill. Any unexpended portion of said fund so specified shall at the end of the fiscal year revert to the respective funds or accounts in proper proportions to which the occupation tax on oil is proportioned at the end of the fiscal year.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.12. False Entries and Other Unlawful Acts

Whoever, as producer, first purchaser, subsequent purchaser, or carrier, or whoever shall as a principal or as agent or representative of such principal, knowingly make any false entries or fail to make any proper entries in the books required by this Chapter with intent to defraud the State; or whoever as such, shall knowingly make a false or incomplete report as required by this Chapter; or whoever, as such, shall knowingly fail or refuse to make the report required to be made; or whoever, as such, shall destroy, mutilate, or secrete any of the records required to be kept by the provisions of this Chapter; or whoever shall, as such, hide or secrete with

intent to defraud, any of the property upon which a lien is created hereunder, or whoever fails or refuses to permit the Comptroller or the Attorney General or the duly authorized representative of either to inspect the records and reports herein provided for, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than Twenty-five Dollars (\$25), nor more than Five Thousand Dollars (\$5,000) or confined in the county jail for not less than one month, nor more than six (6) months, or by both such fine and imprisonment. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.13. Interfering with Inspector

Each and every person appointed by the Commission and holding the certificate of the Commission authorizing such appointee to inspect oil wells, oil leases, pipe lines, railroad cars or tanks shall have the right of free access to such leases, premises, wells, pipe lines, railroad cars, or tanks, and to motor truck tanks, at any and all times for the purpose of inspection with respect to the production and transportation of oil. Any person or owner producing oil in this State who shall by objection, interference, or otherwise prevent any such person so appointed by the Commission from the free right of access to any leases or premises or wells where oil is produced, or who shall in any manner interfere with such representative's examination of any such leases, premises, or wells to ascertain the quantity and time of production of oil, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not exceeding Five Hundred Dollars (\$500) or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 4.14. Measuring Oil or Gas

It shall be unlawful for any person owning, leasing, operating, or controlling any oil property within the State of Texas to permit the oil or gas so produced to pass beyond the possession or control of such person into the possession or control of any other person without first accurately measuring the amount of such oil or such gas, and making and preserving an accurate record thereof. It shall also be unlawful for any person to use any method or device to evade such accurate measurement. Upon conviction for a willful violation of any provision hereof, such person shall be deemed guilty of a felony and, upon such conviction shall be punished by confinement in the State penitentiary for a term of not less than two (2) nor more than four (4) years. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

### CHAPTER 5. OCCUPATION TAX ON SULPHUR PRODUCERS

#### Article

- 5.01. Occupation Tax on Sulphur Producers, Amount of Tax.
- 5.02. Reports, Penalties for Failure to Keep Records.
- 5.03. Failure to Pay Tax, Penalties.

#### Art. 5.01. Occupation Tax on Sulphur Producers, Amount of Tax

Sulphur Producers: Each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, wells or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller in this State, or if such person be other than individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date an amount equal to One Dollar and three cents (\$1.03) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 83, ch. 52, § 1, eff. Aug. 23, 1963.]

Acts 1963, 58th Leg., p. 83, ch. 52, § 2 provided: "Said tax shall be in lieu of the tax now levied on producers of sulphur by Article 5.01, Chapter 5, Title 122A, Taxation-General, Revised Civil Statutes of Texas, which law and all other laws and parts of laws in conflict herewith are hereby repealed."

#### Art. 5.02. Reports, Penalties for Failure to Keep Records

(1) Each person subject to the payment of this tax shall cause to be made, kept, and preserved a full and complete record of all sulphur produced in this State by it, all of which record shall be open at all times to official inspection and examination by the Comptroller or the Attorney General, or any employee of or representative of the Comptroller or the Attorney General. Said records may be destroyed after three (3) years from the last entry appearing in any such record. Any person failing to keep such record, or records, as herein required, shall forfeit to the State of Texas as a penalty any sum not less than Five Hundred Dollars (\$500) nor more than Five Thousand Dollars (\$5,000), payable to the State of Texas, and each ten (10) days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties for each such period of failure to keep such records.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 5.03. Failure to Pay Tax; Penalties

(1) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Chapter within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to five per cent (5%) of the taxes due, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of said tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of

the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or however organized, formed, or created.

(2) The Comptroller may require such other information and such additional reports as he may deem advisable.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 6, eff. Sept. 1, 1961.]

## CHAPTER 6. MOTOR VEHICLE RETAIL SALES AND USE TAX

### Article

- 6.01. Imposition of Tax.
- 6.02. Duties of Comptroller of Public Accounts.
- 6.03. Title Definitions.
- 6.04. Collection of Taxes.
- 6.05. Affidavits and Sales Invoices as to Consideration, Sales Records.
- 6.06. Penalties and Interest; Redetermination and Hearings.
- 6.07. Receipts; Disposition of Collections.
- 6.08. Operation Without Payment of Tax.
- 6.09. Exemptions.
- 6.10 to 6.12. Repealed.

*Chapter 6, Motor Vehicle Retail Sales and Use Tax, as enacted by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, consisting of articles 6.01 to 6.12, was amended by Acts 1963, 58th Leg., p. 371, ch. 138, § 2 to read as now set out in articles 6.01 to 6.08.*

### Art. 6.01. Imposition of Tax

(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to four percent (4%) of the total consideration paid or to be paid for said motor vehicle. In the case of a motor vehicle purchased to be rented or held for rental, the tax is levied on the gross rental receipts of the renting of such motor vehicle at the same rate as that tax levied in Article 20.02 of this title. Provided, however, that where the period for rental is intended to be for more than 31 days, such rental is deemed to be a lease as defined in this Article and the purchaser-lessor must pay the tax on total consideration paid or to be paid for said motor vehicle. The tax on rental receipts shall be collected by the owner from the renter who has exclusive use of the motor vehicle for a period of time and has the right to direct the manner of use of the vehicle, whether exercised or not, for that period. It is unlawful and shall be a misdemeanor for the owner of the rented motor vehicle to advertise that the tax or any part thereof will be absorbed or assumed by the renter.

(2) There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside this State and brought into this State for use upon the public highways by any person, firm or corporation who is a resident of this State or who is domiciled or

doing business in this State. The tax imposed by this subsection shall be equal to four percent (4%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm or corporation operating said motor vehicle upon the public highways of this State.

(3) There is hereby levied a use tax in the sum of Fifteen Dollars (\$15) upon any person making application for the initial certificate of title on a motor vehicle which was previously registered in his name in any other State or foreign country. It is the purpose of this subsection to impose a use tax upon motor vehicles brought into this State by new residents of this State.

(4) There is hereby levied a tax in the sum of Five Dollars (\$5) upon any transaction involving the even exchange of two (2) motor vehicles which tax shall be paid by each party to the transaction.

(5) There is hereby levied a tax in the sum of Ten Dollars (\$10) upon any person who makes a gift of a motor vehicle to another person which tax shall be paid by the donee.

(6) In the renting of motor vehicles, as that term is defined in this Article, and where the gross rental receipts are subjected to tax in lieu of a tax on the total consideration paid or to be paid for a motor vehicle, the purchaser shall furnish the County Assessor and Collector of Taxes with a resale certificate in accordance with the provisions of Article 6.04 of this Chapter, whereupon the Tax Collector shall accept the motor vehicle for registration or transfer.

(7) Motor vehicles purchased to be rented or to be held for renting must be purchased by an owner for use in a business where the renting of motor vehicles is an established business. Every motor vehicle used in a business which either rents or leases motor vehicles to others, as those terms are defined in this Article, and for consideration, must have paid the tax on total consideration at the time of purchase of those motor vehicles intended for leasing or must be collecting and paying the gross rentals receipts tax on renting those motor vehicles. Any motor vehicle leased in this State and owned by the original manufacturer must be registered in this State and taxed in accordance with the provisions of this Article. If a person engages in both renting and leasing of motor vehicles, he shall keep complete and adequate records, segregating or enabling the segregation of both types of transactions.

(8) When the owner of a motor vehicle changes the status of the motor vehicle from a rental unit to a lease unit, the owner shall so inform the State Comptroller of Public Accounts of such change on a form to be supplied by the Comptroller, and the owner shall then pay the tax on such motor vehicle based on the owner's book value and at the rate provided in this Article.

The taxes levied by or under this Chapter shall be in addition to any and all license fees and taxes levied by or under any other law of this State.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963; Acts 1968, 60th Leg., 1st C.S., p. 10, ch. 2, § 14, eff. Oct. 1, 1968; Acts 1971, 62nd Leg., p. 1196, ch. 292, art. 2, § 1, eff. July 1, 1971.]

Sections 5 to 7 of Acts 1963, 58th Leg., p. 371, ch. 138, provided:  
 "Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 6. This Act shall be effective from and after July 1, 1963.

"Sec. 7. All laws or parts of laws in conflict herewith are repealed to the extent of the conflict."

Savings Provisions:

Acts 1963, 58th Leg., p. 371, ch. 138, § 4, provided:

"Sec. 4. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. Taxes incurred under any law repealed by this Act are an obligation within the meaning of this Section. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

"In addition to the application of this Act with respect to transactions occurring on and after the effective date hereof, the definitions, exemptions and other provisions hereof are intended to clarify the prior law (Chapter 24, Acts 1961, Fifty-seventh Legislature, First Called Session) and shall not be considered in construing or applying the prior law in such a manner as to cause or result in the imposition of any tax thereunder which would not have been imposed under the prior law in the absence of this Act."

**Art. 6.02. Duties of Comptroller of Public Accounts**

The Comptroller of Public Accounts shall have general supervision over the collection of the taxes imposed by this Chapter. He may establish rules and regulations for the determination of taxable value of motor vehicles and for the efficient administration of this Chapter. All County Tax Collectors and Assessors shall be furnished with such rules and regulations, and such rules and regulations shall be consistently applied to the determination of taxable value of each motor vehicle purchased in this State or taxable under the use tax levied by Article 6.01 of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963.]

Savings Provisions. See note under art. 6.01.

**Art. 6.03. Title Definitions**

The following words shall have the following meaning unless a different meaning clearly appears from the context.

(A) Sale. The term "sale" as herein used shall include installment and credit sales, and the exchange of property as well as the sale thereof for money, every closed transaction constituting a sale. The transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(B) Retail Sale. The term "retail sale" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use and shall not include those operated under and in accordance with the terms of Article 6686, Revised Civil Statutes of Texas, 1925, as amended. The term "retail sale" also shall include rentals the gross receipts from which are subject to the tax imposed by this Chapter, and purchases used or to be

held for in such rentals shall be considered purchases for resale.

(C) Motor Vehicle. The term "motor vehicle" as herein used shall mean every self-propelled vehicle in or by which any person or property is or may be transported upon a public highway, including trailers and semitrailers, and also including house trailers as such term is defined by the Certificate of Title Act.<sup>1</sup> It shall not mean any device moved only by human power or used exclusively upon stationary rails or tracks and shall not include farm machinery or farm trailers or road-building machinery or any self-propelled vehicle used exclusively to move any of the three (3) immediately preceding vehicles.

(D) Total Consideration.

(1) The term "total consideration" as herein used shall mean the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of sale, without any deduction on account of any of the following:

- (a) The cost of the motor vehicle sold.
- (b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.
- (c) The cost of transportation of the motor vehicle prior to its sale or purchase.
- (d) The amount of any manufacturers' or importers' excise tax imposed upon the motor vehicle by the United States.

(2) The term "total consideration" as herein used does not include any of the following:

- (a) Cash discounts allowed on sale.
- (b) Sales price of motor vehicle returned by customers when the full sales price is refunded either in cash or credit.
- (c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the motor vehicle sold.
- (d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of motor vehicles under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(e) The value of a motor vehicle taken by a seller in trade as all or a part of the consideration for sale of another motor vehicle.

(f) Charges for transportation of motor vehicle after sale.

(3) Any person purchasing motor vehicles for resale at retail who has obtained a certificate of title to a motor vehicle which he uses for personal or business purposes may deduct the fair market value of such vehicle from the "total consideration" when such person purchases another motor vehicle upon which he obtains a certificate of title as a substitute vehicle for personal or business use and the original vehicle is offered for sale at retail.

(E) Rental or Renting. Those terms as herein used shall mean the agreeing by the owner to give exclusive use of a motor vehicle to another for a consideration and for a period of time not to exceed 31 days under any one agreement.

(F) Lease or Leasing. Those terms as herein used shall mean the agreeing by the owner to give exclusive use of a motor vehicle to another for a consideration and for a period of time exceeding 31 days under such agreement.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963; Acts 1968, 60th Leg., 1st C.S., p. 10, ch. 2, § 15, eff. Oct. 1, 1968; Acts 1971, 62nd Leg., p. 1197, ch. 292, art. 2, §§ 3 to 6.]

Savings Provisions. See note under art. 6.01.

<sup>1</sup> See Civil Statutes, art. 6687-1, § 2a.

#### Art. 6.04. Collection of Taxes

The taxes on total consideration paid or to be paid levied in this Chapter shall be collected by the Assessor and Collector of Taxes of the county in which any such motor vehicle is first registered or first transferred after such a sale; the Tax Collector shall refuse to accept for registration or for transfer any motor vehicle until the tax thereon is paid or he is furnished with a resale certificate in accordance with Article 6.01(6) of this Chapter.

The taxes on gross rental receipts levied in this Chapter shall be reported and paid to the State Comptroller of Public Accounts in the same manner that the Limited Sales, Excise and Use Taxes of this State are reported and paid by retailers under Chapter 20, Article 20.05. Motor vehicle owners required to collect, report and pay the taxes on gross rental receipts imposed by this Chapter shall register as sellers with the State Comptroller of Public Accounts and obtain from him a Motor Vehicle Retail Seller's Permit in the same manner as required under the Limited Sales, Excise and Use Tax laws of this State, Article 20.031 of this title.

When a tax becomes due on a motor vehicle purchased outside of this State and brought into this State for use upon the highways the person, firm or corporation operating said motor vehicle upon the public highways of this State shall pay the tax imposed by Article 6.01(2) to the Tax Collector of the county in which such motor vehicle is to be registered. The tax shall be paid at the time application is made for registration of said motor vehicle, and the Tax Collector shall refuse to issue the registration license until the tax is paid or he is furnished with a resale certificate in accordance with Article 6.01(6) of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963; Acts 1971, 62nd Leg., p. 1198, ch. 292, art. 2, § 7, eff. July 1, 1971.]

Savings Provisions. See note under art. 6.01.

#### Art. 6.05. Affidavits and Sales Invoices as to Consideration, Sales Records

(1) The purchaser and seller shall make a joint affidavit setting forth the then value in dollars of the total consideration, whether in money or other

things of value, received or to be received by the seller or his nominee in a retail sale. Where a transfer of title to a motor vehicle is made either as the result of an even exchange or of a gift, the two (2) principal parties to such a transaction shall make a joint affidavit setting forth the facts describing the nature of the transaction. In an even exchange no transfer of title shall be accomplished until the two (2) principal parties have paid a tax of Five Dollars (\$5) each to the Tax Assessor and Collector. Where any party to a sale, exchange, even exchange or gift is a corporation, the president, vice president, secretary, manager or other authorized officer of the corporation shall make the affidavit for the corporation. When any tax imposed by this Chapter is paid to the Tax Assessor and Collector, the person upon whom the tax is imposed by this Act shall file with the Tax Assessor and Collector the joint affidavit required by this Article. The Tax Collector and Assessor shall keep copies of the affidavits until they are called for by the Comptroller of Public Accounts or his representative for auditing.

(2) The seller shall keep complete records of each motor vehicle transferred by him at a retail sale including a true and complete copy of the invoice pertaining to the transaction described by such affidavit. Said invoice shall show the full price of the motor vehicle plus the itemized price of all accessories attached thereto. The record shall be retained by the seller at his principal office for at least four (4) years from the date of the transfer of the motor vehicle. All sales and supporting records of each seller shall be open to inspection and audit by the Comptroller of Public Accounts or his authorized representative.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963.]

Savings Provisions. See note under art. 6.01.

#### Art. 6.06. Penalties and Interest; Redetermination and Hearings

(1) If the Comptroller upon audit of the records of the seller shall determine that the amount of tax due on any transaction was incorrectly reported on the joint affidavit so that the tax actually paid was less than that actually due, the seller shall then be liable for the full amount of tax determined to be due plus a penalty of ten per cent (10%) of the amount of tax due and interest on the amount of tax due computed at the rate of six per cent (6%) per annum beginning sixty (60) days from the date on which the joint affidavit was executed. The Comptroller shall notify the seller in writing of his determination and the seller shall, within ten (10) days following the receipt of such notice, pay to the Comptroller the amount of back taxes, penalty and interest. The Comptroller shall promulgate rules and regulations under which the seller may petition for a redetermination of liability and shall grant the seller an oral hearing. The Comptroller may decrease or increase the amount of his determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted

by the Comptroller at or before the hearing, in which case the seller shall be entitled to a thirty-day continuance of the hearing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

(2) If any seller shall not keep and retain complete records for the space of four (4) years as provided in Article 6.05(2) he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963.]

Savings Provisions. See note under art. 6.01.

**Art. 6.07. Receipts; Disposition of Collections**

The Tax Assessor and Collector shall issue a receipt to the person paying the taxes imposed by this Chapter, making two (2) duplicate copies of the said receipt. The Comptroller of Public Accounts shall prescribe the form of the receipt. On the tenth day of each month, the Tax Assessor and Collector shall forward ninety-five percent (95%) of the money collected from the taxes imposed by this Chapter to the Comptroller of Public Accounts, together with one duplicate copy of each receipt issued by him to persons paying the tax or fee imposed by this Chapter. The Tax Assessor and Collector shall retain one duplicate receipt as a permanent record in his office and shall retain five percent (5%) of the taxes collected as fees of office, or to be paid into the officers' salary fund of the county as provided by General Law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963; Acts 1971, 62nd Leg., p. 892, ch. 121, § 1, eff. Aug. 30, 1971.]

Savings Provisions. See note under art. 6.01.

**Art. 6.08. Operation Without Payment of Tax**

If any person shall knowingly operate any motor vehicle, such as defined in this Chapter, upon the highways of this State, without the tax thereon having been paid as herein levied and provided, he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Ten Dollars (\$10) nor more than Five Hundred Dollars (\$500), or confined in the county jail for not less than one day nor more than thirty (30) days or by both such fine and imprisonment.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963.]

Savings Provisions. See note under art. 6.01.

**Art. 6.09. Exemptions**

(1) The taxes imposed by this Chapter do not apply to the sale or use of a motor vehicle owned by a motor vehicle dealer, as defined in Chapter 30, Section 1, Acts of the 58th Legislature, Regular Session, 1963,<sup>1</sup> which is purchased in this state and loaned free of charge by such dealer to a public school for use in an approved standard driver training course.

(2) The taxes imposed by this Chapter do not apply to fire trucks or other motor vehicles used exclusively for fire fighting purposes when purchased by a volunteer fire department. "Volunteer fire department" means any company, department, or association organized for the purpose of answering fire alarms and extinguishing fires, the members of which receive no compensation or nominal compensation for their services thus rendered.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 367, ch. 174, § 1, eff. Aug. 30, 1965; Acts 1973, 63rd Leg., p. 20, ch. 16, § 3, eff. Aug. 27, 1973.]

<sup>1</sup> Civil Statutes, Art. 6686.

**Arts. 6.10 to 6.12. Repealed by Acts 1963, 58th Leg., p. 371, ch. 138, § 2, eff. July 1, 1963**

Savings Provisions. See note under art. 6.01.

**CHAPTER 7. CIGARETTE TAX LAW**

Article

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**Art. 7.01. Definitions**

The following words, terms, and phrases, as used in this Chapter are hereby defined as follows:

(1) "Cigarette" shall mean and include any roll for smoking made of tobacco irrespective of size or shape and irrespective of tobacco being

flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or other material than tobacco. This definition shall not include cigars.

(2) "Individual Package of Cigarettes" shall mean and include the smallest package of cigarettes ordinarily sold at retail and shall include any and every package of cigarettes upon which a federal tax is due.

(3) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver.

(4) "Place of Business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if sold from any vehicle, train or cigarette vending machine, the vehicle, train or cigarette vending machine on which or from which such cigarettes are sold shall constitute a place of business.

(5) "Stamp" shall mean the stamp or stamps printed, manufactured or made by authority of the Comptroller and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(6) "Counterfeit Stamp" shall mean any stamp, label, print, tag or token which evidences, or purports to evidence, the payment of any tax levied by this Chapter, and which stamp, label, print, tag or token has not been printed, manufactured or made by authority of the Comptroller and/or issued, sold or circulated by the Treasurer.

(7) "Previously Used Stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

(8) "First Sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this State, or the loss of cigarettes in this State whether by negligence, theft, or any other unaccountable loss.

(9) "Drop Shipment" shall mean and include any delivery of cigarettes received by any person within this State when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(10) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas or his duly authorized assistants and employees.

(11) "Treasurer" shall mean the State Treasurer of Texas or his duly authorized assistants and employees.

(12) "Attorney General" shall mean the Attorney General of the State of Texas or his duly authorized assistants and employees.

(13) "Distributor" shall mean and include every person in this State who manufactures or produces cigarettes or who ships, transports, or imports into this State or in any manner acquires or possesses cigarettes and makes a "first sale" of the same in this State; and said term shall also include every person in this State who is authorized to purchase an<sup>1</sup> open account unstamped cigarettes direct from all those manufacturers who have general distribution of cigarettes in Texas and who sell to qualified wholesalers or in any manner acquires or possesses unstamped cigarettes for the purpose of making a "first sale" of the same within this State.

(14) "Wholesale Dealer" shall mean and include every "person" other than a distributor or a salesman in the employ of a manufacturer and handling only the products of his employer who engages in the business of selling or distributing cigarettes in this State for the purpose of resale.

(15) "Retail Dealer" shall mean and include every person other than a distributor or wholesale dealer who shall sell, distribute, or offer for sale or distribution or possess for the purpose of sale or distribution, cigarettes, irrespective of quantity or amount or the number of sales or distributions; and it shall also mean and include every person other than a distributor or wholesale dealer who distributes or disposes of cigarettes in unbroken individual packages or in quantities of ten (10) or more as gifts or prizes or in any other manner of distribution or disposal where no sale is involved. Coin-operated cigarette or tobacco products vending machines shall be considered a retail dealer.

(16) "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers and retail dealers.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 1262, ch. 580, § 1, eff. June 17, 1965; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 2, §§ 2, 3, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 2765, ch. 895, § 1, eff. June 15, 1971.]

<sup>1</sup> Probably should read "on".  
For effective date, severability and emergency clauses of Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, see note under art. 1.031.

#### Art. 7.02. Rate of Tax

(1) A tax of Two Dollars (\$2) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Four Dollars and Ten Cents (\$4.10) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid

only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(2) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Chapter; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided, further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package when the manufacturer of the cigarette reports and pays the said tax thereon directly to the State.

(3) The impact of the tax levied by this Chapter is hereby declared to be on the vendee, user, consumer or possessor of cigarettes in this State and when said tax is paid by any other person, such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 680, ch. 316, § 1, eff. Aug. 28, 1961.]

#### **Art. 7.03. Sales by Post, Camp or Unit Exchange Not to Be Taxed**

(1) Post, Camp, or Unit Exchanges established and operated within the State of Texas, by the United States Military, Naval, or Marine forces and not otherwise, on Military, Naval or Marine Posts, Camps, or Reservations, including any locality within this State where a cantonment camp is located and erected, where officers, soldiers, sailors, nurses, or marines of the United States Army, Navy, or Marine Corps are being trained, are hereby declared to be, and are recognized only for such tax purposes as are hereinafter set out, instrumentalities and agencies of the United States Government.

(2) It is further provided that the provisions of this law shall extend to and apply to any authorized branch of a Post, Camp, or Unit Exchange which may be established for the exclusive benefit of the officers, soldiers, sailors, nurses, or marines in the Army, Navy, or Marine Corps of the United States at any time that said officers, soldiers, sailors, nurses, or marines shall be on authorized military maneuvers. It being the express intent of the Legislature by this Act to allow soldiers, sailors, nurses and marines in the Army, Navy and Marine Corps of the

United States, and no others, to purchase cigarettes for their exclusive use and not otherwise, from said Camp, Unit, or Post Exchange, and to consume or smoke the same without paying the tax imposed upon cigarettes used or otherwise disposed of in this State by Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended. It is also expressly provided that this law shall not be construed as authorizing any civilian employee of the United States Government or any person or persons whomsoever, other than officers, soldiers, sailors, nurses and marines of the Army, Navy or Marine Corps to purchase cigarettes free of the State Tax from a Camp, Unit, or Post Exchange, or on authorized military maneuvers or to use, consume or smoke said cigarettes without paying the State Tax as provided by the said law cited hereinabove.

All persons, except officers, soldiers, sailors, nurses or marines shall be subject to the tax imposed upon the use of cigarettes by the said Section 2, Chapter 241, as amended, Acts of the Regular Session of the 44th Legislature, and no officer, soldier, sailor, nurse or marine or person shall sell or furnish cigarettes upon which the State Tax has not been paid to any civilian employee of the United States Government or to any person or persons other than officers, soldiers, sailors, nurses and marines serving as such in the Army, Navy or Marine Corps of the United States. Provided, further, that no civilian employee of the United States Government or other person whomsoever, except such officers, soldiers, sailors, nurses or marines shall purchase or receive cigarettes without the State Tax Stamp being affixed to the package to evidence the payment of the tax levied by law from any such Post, Camp or Unit Exchange, or shall use or consume cigarettes upon which said tax has not been paid to the State and the possession by any said civilian employee of the United States Government or person other than said officers, soldiers, sailors, nurses and marines of cigarettes without the State Tax Stamp affixed to the package at any place in the State of Texas shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of sale or use without payment of the tax levied by law.

(3) It is further provided that no officers, soldiers, sailors, nurses or marines, in the Army, Navy, or Marine Corps of the United States shall remove from the confines of any military or naval post or reservation in this State, cigarettes without the State Tax Stamp affixed to the package in quantities of more than forty (40) cigarettes or shall resell, distribute or furnish cigarettes without the State Tax Stamp affixed to the package to any person, persons, firm or corporation not authorized to use or consume the same without the State Tax having been paid thereon. Any person, firm, or corporation who knowingly removes from such reservations any cigarettes or sells, furnishes, purchases, or receives any cigarettes in violation of this provision shall be subject to the penalties provided in this law. The

possession of more than forty (40) cigarettes by any said officers, soldiers, sailors, nurses or marines without the State Tax Stamp affixed to the package at any place in Texas other than a military or naval post or reservation shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of a sale in Texas without the State Tax Stamps affixed.

(4) It is further recognized, declared and provided that the provision of Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended by Senate Bill No. 247, Chapter 310, Acts of Regular Session of the 45th Legislature, relating to "first sale" of cigarettes does not apply to sales by such Post, Camp, or Unit Exchanges to officers, soldiers, sailors, nurses and marines of the Army, Navy and Marine Corps under the conditions specified in the preceding sections of this law or to sales in accordance with such specified conditions and for such resale purposes to such Post, Camp, or Unit Exchanges by a licensed cigarette distributor in Texas.

(5) Any person, firm, or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). Each violation of any of the provisions of this Chapter shall be considered a separate offense.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.04. Tax in Lieu of Other Occupation or Excise Tax

Provided that the taxes imposed by this Chapter shall be in lieu of any other occupation or excise tax imposed by the State or by any political subdivision of the State on cigarettes.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.05. Sale of Stamps

Cigarette stamps shall be sold by the Treasurer in unbroken sheets of one hundred (100) stamps only and shall be purchased from and sold only by said Treasurer, except as hereinafter provided. When the Comptroller deems it proper to accept the compromise provided for herein, and the offender does not possess sufficient unused stamps to cover his unstamped stock of cigarettes, then and in that event the offender may purchase the required stamps from any distributor through a requisition from the Comptroller in order that his unstamped stock of cigarettes may be stamped immediately and under the direction of the Comptroller and the Comptroller shall have the authority to issue such requisition which shall be made in triplicate on a form prescribed by the Comptroller with the printed words "Original," "Duplicate," and "Triplicate," on the respective sheets thereof. The original requisition shall be kept by the Comptroller and the duplicate and triplicate shall be delivered to the purchaser and seller of said stamps, respectively, who shall hold such copies of requisition at all times open to

the inspection of the Comptroller and the Attorney General for a period of two (2) years. The Comptroller shall have the power and authority in the enforcement of this Chapter to recall any stamps which have been sold by said Treasurer which have not been used and it shall be the duty of said Treasurer upon receipt of such recalled stamps to issue stamps of other serial numbers therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of said Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.06. Additional Tax

(1) In addition to the tax levied by Article 7.02 herein, there is hereby imposed a tax of Seven Dollars and Twenty-five Cents (\$7.25) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Seven Dollars and Twenty-five Cents (\$7.25) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(2) Payment of the tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Chapter; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided, further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package, when the manufacturer of the cigarettes reports and pays the tax thereon directly to the State.

(3) The net revenue derived from the tax levied under this Article shall be allocated as follows:

(a) Fifty cents of the tax levied under this Article on each 1,000 cigarettes shall be credited to a new special fund known as the Texas Parks Fund which may be used by the Parks and Wildlife Department for the acquisition, planning, and development of state parks and historic sites. Provided, no portion of the revenues allocated under this subsection shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State.

Provided, further, the revenues allocated under this subsection may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this subsection, the said revenues shall be credited to the Texas Parks Fund, except that the revenues allocated under this subsection during the month of August of each year shall be credited to the Texas Parks Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this subsection shall remain or be distributed under the provisions governing the said Clearance Fund.

(b) The remaining net revenue derived from the tax levied under this Article after allocating the amount specified in Subsection (a) of this Section shall be credited to the General Fund of this State. Provided, no portion of the revenues allocated under this subsection shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the revenues allocated under this subsection may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this subsection, the said revenues shall be credited to the General Fund, except that the revenues allocated under this subsection during the month of August of each year shall be credited to the General Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this subsection shall remain or be distributed under the provisions governing the said Clearance Fund.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 828, ch. 401, § 1, eff. July 1, 1965; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 2, § 1, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1200, ch. 292, art. 4, § 1, eff. July 1, 1971.]

Section 2 of the amendatory act of 1965 provided that the act should take effect on July 1, 1965.

For effective date, severability and emergency clauses of Acts 1969, 61st Leg., 2nd C.S. p. 61, ch. 1, see note under art. 1.031.

#### Art. 7.07. Stamp Meters

The Comptroller is empowered to authorize licensed cigarette distributors to impress on or attach to each package of cigarettes, evidence of tax payments, by means of a stamp metering machine. The Comptroller shall adopt rules and regulations relating to the imprinting of such tax meter stamps as will result in payment of the proper taxes herein imposed. No distributor shall affix revenue tax stamps to original packages of cigarettes by imprinting tax meter stamps thereon unless such distributor has first obtained permission from the Comptroller to employ this method of affixation. The Comptroller shall regulate the use of tax meters and may, to assure the proper collection of the taxes imposed by this Chapter, revoke or suspend the privilege, there-

before granted by the Comptroller to any distributor, without previous notice, to imprint tax meter stamps upon original packages of cigarettes; and provided that all distributors of cigarettes using meter stamping machines shall submit their request for settings on forms to be furnished by the Treasurer of the State of Texas. Distributors must forward their meters, at the expense of the distributor, direct to the State Treasurer, Austin, Texas, for setting, accompanied by proper remittance as required. The meter will then be set and returned, insurance and shipping cost collect upon delivery. The State Treasurer will retain the key to the meter and the seal on said meter may be broken or removed only by the State Treasurer. All requests for meter settings shall be in units of one hundred (100) and must not exceed ninety-nine thousand, nine hundred (99,900). [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.08. Authority of Comptroller

(1) The Comptroller shall design and have printed or manufactured new cigarette tax stamps of such size and denomination and in such quantities as may be determined by the Comptroller. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Comptroller may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of this Act.

(2) The Comptroller, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit at a discount of 2 $\frac{3}{4}$  percent of the face value; provided, that no discount shall be allowed to out-of-state purchasers residing in the states that do not give discounts on cigarette tax stamps purchased from said states by Texas cigarette distributors; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same, such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to

be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

(3) The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to such change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of this Chapter, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for stamps of the new denomination. Such exchange shall be made within sixty (60) days after the effective date of this Act, and it shall be unlawful for any person to have in his possession any stamps of the old denomination after the expiration of sixty (60) days from the effective date of this Chapter. It shall further be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old denomination are affixed. After the expiration of sixty (60) days from the effective date of this Chapter, stamps of the old denomination shall be void, provided, that stamps removed from cigarettes determined by the Comptroller to be unsaleable may be redeemed under rules and regulations promulgated or hereafter promulgated by the Comptroller. Every retail dealer and wholesale dealer having cigarettes to which stamps of the old denomination are affixed in his stock in quantities of two thousand (2,000) or more on the effective date of this Chapter shall immediately inventory the same and file a report of such inventory to the Comptroller and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the amount of additional tax due on such cigarettes computed at the new rate provided in this Chapter. Such retail dealer or wholesale dealer shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller. Failure or refusal to render such inventory shall be deemed sufficient grounds for the cancellation of any permit issued under this Chapter, and in addition thereto, any retail or wholesale dealer failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

(4) The Comptroller is hereby authorized to change the design of the stamp as often as he may deem such change necessary to the best enforcement of the provisions of this Chapter, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided, that whenever a change is made in the design

of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of the issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of a new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the purposes of the enforcement of the provisions of this Chapter, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Comptroller to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of the old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Article 7.37 of this Chapter.

(5) Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on any stamps purchased.

(6) Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps ordered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of the purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided, further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification

or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamps.

(7) Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided, further, that the Treasurer shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such revenue is allocated as herein provided. The Comptroller shall have full power and authority over obsolete cigarette stamps, and the responsibility for burning said stamps is placed upon the Comptroller. Appropriations out of Cigarette Tax Enforcement Fund (No. 66) heretofore made to the State Board of Control for the purpose of paying the salary of the supervisor and for the purchase of cigarette stamps shall hereafter be made to the Comptroller of Public Accounts, Cigarette Tax Division.

(8) A distributor may order stamps shipped with draft attached to the bank with which said distributor regularly transacts business. The Treasurer is hereby authorized to ship stamps in compliance with such orders to any such bank authorized to do business in Texas under the laws of this State and the United States. Such stamps, together with the invoice required under Article 7.08, Subsection (6) of this Chapter, shall be attached to a form draft to be prescribed by the State Auditor, which draft shall show the date of shipment, the name and address of the bank, the name of the distributor and the amount of said draft. If said draft is not paid within twenty (20) days of the date thereon, it shall be returned together with the stamps attached to the Treasurer. Any distributor failing to take up such draft and stamps as ordered by him shall be notified at the end of such twenty-day period by the Treasurer to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps with draft attached as herein provided.

(9) The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. In each fiscal year, payment for stamps and meters received in August of that year shall be paid in full on or before August 31 no matter when purchased or received by the distributor during that month. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall ship such stamps or set such meter in compliance with the order and

transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement, or for stamps and meters received in August of each fiscal year in full on or before August 31 no matter when purchased or received by the distributor during that month. However, in order to secure the payments of the tax as provided in this Section, a distributor must file with the State Treasurer a surety bond, approved by the State Treasurer and the Attorney General, with a corporate surety authorized to do business in this State, conditioned upon payment in full for the stamps or meter settings within the time specified in this Section. Payment by a company check or by personal check of a bonded distributor shall be treated as cash payment when received by the State Treasurer for payment of stamps or meter settings received by the bonded distributor. The State Treasurer shall fix the amount of the bond, in an amount equal to one and one-half times the credit in stamps and/or meter settings requested by the distributor and approved by the State Treasurer for the purchase of stamps and/or meter settings during the succeeding month. Any distributor who fails to forward the proper remittance by the due date shall be notified by the State Treasurer within five (5) days after the due date to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section and to enforce payment of the bond.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1405, ch. 426, § 1, eff. June 2, 1969; Acts 1971, 62nd Leg., p. 2347, ch. 712, §§ 1, 2A, eff. Aug. 30, 1971.]

#### Art. 7.09. Distributors, Wholesalers, Retail Dealers

(1) Every distributor, wholesale dealer and retail dealer in this State now engaged, or who desires to become engaged, in the sale or use of cigarettes upon which a tax is required to be paid, shall file with the Comptroller in accordance with the terms and conditions hereinafter set forth by this Article an application for a cigarette permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars (\$25) if for a distributor's permit, or a fee of Fifteen Dollars (\$15) if for a wholesale dealer's permit, or a fee of Five Dollars (\$5) if for a retail dealer's permit except that distributors, wholesalers, and retail dealers who hold valid permits at the effective date of this law may continue in business under such permits until the expiration thereof at which time renewal permits must be obtained under the terms and conditions set forth in this Article. No person subject to this Article, who is

lawfully engaged in business as a distributor on the date of enactment of this law shall be denied the right to carry on such business pending reasonable opportunity to make application for permit and final action thereon. No other person shall engage in business as a distributor without first obtaining a permit to engage in such business.

(2) Every person, before commencing business as a distributor of tobacco products, and at such other time as the Comptroller or his duly appointed agent shall prescribe or direct, shall make application for the permit provided for in this Article. The application shall be in such form as the Comptroller or his duly appointed agent shall prescribe and shall set forth truthfully and accurately all of the information called for on and by the form. The Comptroller or his duly appointed agent may require upon or supplementary to such application all information pertaining to the applicant's financial standing, business experience, trade connections, previous business affiliation including prior employment, prior convictions for felonies and any and all other information, without regard to the rule of ejusdem generis, which he may deem necessary to determine whether the applicant is entitled to a permit provided that in the case of applicants which are corporations, associations, joint ventures, syndicates, partnerships, proprietorships or other similar entities all such information enumerated above may be required as to each officer, director, 10 per cent or more stockholder, partner, member, owner and managing employee or employees. Such application may be rejected and the permit denied if the Comptroller or his duly appointed agent after notice and opportunity for hearing finds that:

(a) The premises on which it is proposed to conduct the business are not adequate to protect the revenue; or

(b) The applicant or managing employee (including, in the case of a corporation, any officer, director, manager or any stockholder who holds directly or through family or partner relationship 10 per cent or more of the stock of such corporation and, in the case of a partnership, a partner or manager) is, by reason of his business experience, financial standing, trade connections, previous business affiliation, including prior employment, or prior conviction of a felony not likely to maintain operations in compliance with this Chapter, or has failed to disclose any material information required or made any material false statement in the application therefor.

(3) If the Comptroller or his duly appointed agent has reason to believe any person holding a permit has not in good faith complied with the provisions of this Article or rules and regulations or with any other provision of this Chapter involving intent to defraud, or has violated the conditions upon which such permit was issued, or has failed to maintain his premises in such manner as to protect the revenue or has failed to notify the Comptroller or his duly

appointed agent of any change in the business affecting ownership, control or operation thereof, the Comptroller or his duly appointed agent shall issue an order stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked.

(4) If after a hearing the Comptroller or his duly appointed agent finds that such person has not in good faith complied with this Article or rules and regulations or with any other provision of this Chapter involving intent to defraud, has violated the conditions of such permit, has failed to disclose any material information required or made any material false statement in application therefor, or has failed to maintain his premises in such manner as to protect the revenue, or has engaged in any activities which endanger the revenue, such permit shall be suspended for such period as the Comptroller or his duly appointed agent deems proper or shall be revoked.

(5) Applications for permits to conduct business as wholesalers or retail dealers shall be made on forms prescribed by the Comptroller, to be furnished upon written request, failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth:

(a) The manner in which such wholesale dealer or retail dealer transacts or intends to transact such business as wholesale dealer or retail dealer;

(b) The principal office, residence and place of business in Texas for which the permit is to apply;

(c) And, if other than an individual, the principal officers or members thereof not to exceed three (3) and their addresses.

The Comptroller may require any other information as he may desire in said applications.

(6) No distributor, wholesale dealer or retail dealer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that any distributor manufacturing, importing, or acquiring in any manner, cigarettes for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor; provided, further, that the Treasurer shall be authorized to sell stamps to such distributors acquiring cigarettes for their own personal use or consumption and not for sale or other disposal, in

lesser quantities than unbroken sheets of one hundred (100) stamps.

(7) Upon receipt of the application and fee herein provided for, and if the applicant has, in the judgment of the Comptroller or his designated agent, complied with all conditions of issuance as enumerated above and the Comptroller or his designated agent has determined that issuance of the permit will not jeopardize the revenue, then the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a nonassignable consecutively numbered permit, designating the kind of permit and authorizing the sale of cigarettes in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended if the conditions of issuance as set forth above are not complied with, upon any violation of provisions of this Act or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any cigarettes from such place of business until a new permit is granted or the suspension of the old permit removed. Provided, that the Treasurer may refuse to sell stamps to any person who has not obtained a permit to engage in business as a distributor or to any distributor whose permit has been revoked or suspended until such permit has been reinstated or a new permit issued.

(8) The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, that any distributor, wholesale dealer, or retail dealer who is the legal owner and holder and is operating under any unexpired permit which has been issued by the Comptroller as provided by Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, as amended, shall not be required to make application for and obtain from the Comptroller a permit as required herein prior to the expiration of the twelve (12) months for which such permit was issued. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells cigarettes at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification.

(9) If the application is for a permit to sell cigarettes from or by means of a cigarette vending machine, train, automobile or other vehicle, the serial number of said vending machine, the make and motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and number of said train shall be shown on the application.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 1262, ch. 580, § 3, eff. June 17, 1965.]

#### Art. 7.10. Possession of Unstamped Cigarettes

Every person, other than a distributing agent, bonded distributor, or common carrier, shall before receiving or accepting delivery of any cigarettes without stamps affixed to evidence the payment of the tax, obtain from the Treasurer the requisite amount or number of stamps necessary to stamp such cigarettes and the possession of any unstamped cigarettes without the possession of the requisite amount or number of stamps shall be prima facie evidence that said cigarettes are possessed for the purpose of making a "first sale" thereof without stamps and without payment of the tax levied herein.

Every distributor in this State shall cause all cigarettes received by him to have the requisite denominations and amount of stamps affixed to represent the tax as levied herein, within ninety-six (96) hours, excluding Saturdays, Sundays, and legal holidays, after receiving delivery of them.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 2046, ch. 755, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2348, ch. 712, § 2, eff. Aug. 30, 1971.]

#### Art. 7.11. Distributor, Bond

Any distributor or other person engaged in interstate business who shall, within thirty (30) days from the date this law becomes effective, execute and file with the Comptroller a good and sufficient surety bond signed by the distributor or other person and a good and sufficient surety company or companies authorized to do business in this State shall be permitted to set aside such part of his stock of cigarettes as may be necessary for the conduct of such interstate business without affixing the stamps required by this Act. Provided, that such bond shall be approved by and acceptable to the Comptroller in an amount of not less than Two Hundred and Fifty (\$250.00) Dollars and not more than double an amount necessary to stamp the largest quantity of cigarettes set aside at any time for the conduct of such business, and any quantity so set aside which is larger than that permitted in said bond shall be subject to the same requirements as cigarettes purchased or possessed for intrastate sale. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock. The amount of the bond required of such distributor or other person shall be fixed by the Comptroller, and subject to the minimum limitation herein provided; additional bond or a new bond shall be required by the Comptroller at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond or new bond shall be supplied within ten (10) days after demand. Provided, that said bond or bonds shall be payable to the State of Texas in Austin, Travis County, Texas, and conditioned for the full, complete and faithful performance of all the conditions and requirements of this Act affect-

ing said distributor or other person on a form to be prescribed by the Comptroller, with the approval of the Attorney General. Should the distributor or other person fail or refuse to supply a new bond or additional bond within ten (10) days after demand, the Comptroller shall have the power and authority to cancel forthwith any existing bond made and executed by and for said distributor or other person. In the event said bond is cancelled, said distributor or other person shall within forty-eight (48) hours after said cancellation excluding Sundays and legal holidays, cause any and all cigarettes received prior to said cancellation to have the requisite denomination and amount of stamps affixed to represent the tax as herein provided. Cigarettes set aside for interstate business which are not kept entirely separate and apart from intrastate stock shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale."

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.12. Rules and Regulations

The Comptroller is hereby authorized to prescribe and promulgate rules and regulations not inconsistent with this Act for the purpose of regulating the sale of cigarettes for movement into States adjoining Texas when said cigarettes have the cigarette tax stamp of such adjoining State affixed thereto.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.13. Records of Cigarettes

(1) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said cigarettes, and in addition thereto a book record in a well bound book which will provide complete information on all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said cigarettes were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail, the number and kind of cigarettes received with stamps affixed thereto, and, if a distributor, the number and kind of cigarettes received without the stamps affixed, and an inventory or inventories on the first of each month, showing the number and kind of cigarettes on hand with stamps affixed

thereto, and, if a distributor, the number and kind without stamps affixed.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.14. Stamp Records, Sales Records

(1) Every distributor shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General the invoice of stamps purchased or received from the Treasurer and in addition thereto a book record in a well bound book which will provide complete information of all stamps purchased from the Treasurer and the disposition thereof. Such record shall show the date of receipt of stamps purchased, the number or quantity of stamps, the denomination, and amount paid for stamps so purchased. Such record shall also show the number or quantity, the denomination and face value of stamps sold by requisition from the Comptroller with the name of purchaser of said requisitioned stamps, the number or quantity, the denomination and face value of stamps sent to or received from the Treasurer as an exchange and the inventory or inventories of all stamps on hand on the first day of each month, said inventory to show the number or quantity, denominations and face value of said stamps.

(2) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of cigarettes, regardless of whether or not the tax is due upon said cigarettes under the provisions of this Chapter, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the number and kind of cigarettes sold, and if the sale is by a distributor, the number and kind of cigarettes with the stamps affixed to each individual package, and the number and kind of cigarettes without the stamps affixed thereto, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of such cigarettes. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided, however, that when the cigarettes are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further, that where a distributor or wholesale dealer sells cigarettes at

retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such stock of cigarettes invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well bound book or books of all cigarettes sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(3) Provided, that every person engaged in the business of selling cigarettes in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(4) Salesmen in the employ of a manufacturer, and handling only the products of his employer, who engage in the business of selling or distributing cigarettes with stamps affixed in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said cigarettes.

(5) "Solicitors" engaged in the business of soliciting orders for cigarettes for shipment to points within this State shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for cigarettes for such shipments which record shall include the quantity and kind of cigarettes ordered or shipped, from whom ordered or by whom shipped, the full name and correct address of the purchaser; the date said cigarettes were ordered, and if available the date said cigarettes were shipped. Such record shall be kept for all cigarettes shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.15. State to Have Preferred Lien

All taxes, penalties, and cost of auditing, as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as distributor, which property shall include manufacturing plants, storage plants, warehouses, office building and equipment, trucks,

cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all cigarettes and stamps of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid, the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the Comptroller as expenses incurred in making audits, shall be placed in the General Revenue Fund of the State.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 255, ch. 131, § 1, eff. Aug. 28, 1961.]

#### Art. 7.16. Solicitor's Permit, Penalty

(1) No individual shall offer for sale or solicit any order in this State for the sale of any cigarettes for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permittee to solicit orders for the sale of cigarettes and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar (\$1), and the permit shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount set out above. Such permittee shall, on the fifth (5th) day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for cigarettes, said copies to show the quantity and kind of cigarettes ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said cigarettes were ordered and any other information which may be required by the Comptroller; and the failure of such permittee to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

(2) If any person shall offer for sale or solicit any order in this State for the sale of cigarettes for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-

five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.17. Distributor's Report

Every distributor shall make and deliver to the Comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the distributor, or his representative in charge, and which shall show the date said report was executed, the name and address of said distributor, the month which the report covers, the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month, the number of unstamped and the number of stamped cigarettes purchased and received during the month, the number of unstamped and the number of stamped cigarettes returned from customers or received from any other source, the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory or disposed of in any other manner and the number of unstamped and the number of stamped cigarettes on hand at the end of the month. Said report shall show separately the number of cigarettes sold or distributed in intrastate commerce and the number sold or distributed in interstate commerce. Said report shall also show the number, denomination and face value of unused stamps on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps purchased and received, the number, denomination and face value of stamps sold, used, lost, stolen, exchanged, returned to the Treasurer, or disposed of in any other manner and the number, denomination and face value of stamps on hand at the end of the month covered in the report. Provided, that said report shall also show separately all drop-shipments handled by or through said distributor during the period reported, which information shall include the date of shipment, the invoice number, the name and address of the consignee, the number and brand of such cigarettes and the means of delivery and a copy or copies of all invoices of such drop-shipments shall be attached to and sent with said report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up in said report but the failure of any distributor to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.18. Suit for Tax, Evidence

(1) If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representa-

tive, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the number of cigarettes sold by such distributor or his representatives, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing section, and attach or file as an exhibit any report or audit to said distributor, and an affidavit made by the Comptroller or his representatives that the taxes shown to be due by said report or audit are unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.19. Venue

Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Act shall be in a Court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.20. Availability of Records

Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller, after the stocks are delivered from said vending machine, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.21. Forfeiture or Suspension of Permits

If any distributing agent, distributor, wholesale dealer or retail dealer has violated any provision of this Act, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and

authority to forfeit or suspend the permit or permits of said distributing agent, distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from the date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributing agent, distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to anyone whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no cigarettes shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 1262, ch. 580, § 4, eff. June 17, 1965.]

#### Art. 7.22. Allocation of Revenues

The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from sale of stamps.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.23. Distributing Agents; Paying Taxes and Affixing Stamps; Licensing

(1) Every distributing agent in this State now engaged, or who desires to become engaged in the business of storing unstamped cigarettes previously sold in interstate commerce and received in interstate commerce for distribution or delivery only upon order received from without the State, shall within thirty (30) days from the date this law becomes effective, file with the Comptroller, an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars (\$100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year but may be renewed upon like application and upon payment of another fee in the amount set out above. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated, a non-assignable, consecutively numbered permit, authorizing the storing and distribution of unstamped cigarettes within this State when such distribution is made upon interstate orders only. Notwithstanding anything in this Chapter which may provide to the contrary, the distribution or delivery of cigarettes by a distributing agent to a licensed distributor in Texas pursuant to instructions received from outside the State shall not constitute the "first sale" of such cigarettes.

(2) Repealed.

(3) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all cigarettes received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said cigarettes, or copies thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said cigarettes.

(4) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of cigarettes made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, the name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the number and kind of cigarettes delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

(5) Permits required by Articles 7.09, 7.16 or 7.23 of this Chapter issued after the effective date of this Chapter shall expire the last day of February following issuance. From the effective date of this Chapter the Comptroller shall prorate the fees for new or renewal permits required by Articles 7.09 or 7.23 of this Chapter by allowing a discount computed by quarters of the licensing year. The licensing year shall be from and shall include the first day of March through the last day of February of each year.

(6) Each permit holder required to obtain a permit under Articles 7.09, 7.16 or 7.23 of this Chapter who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay, in addition to the permit fee, a late application fee of One Dollar (\$1.00), which shall be paid to the Comptroller at the time the permit fee is paid.

(7) When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Chapter the permit holder shall pay a service fee of Five Dollars (\$5.00) in addition to the permit fee.

(8) In cases where any permit expires within three (3) months from the date of issuance or renewal because of the end of the licensing year, the Comptroller may with the consent of the permit holder collect both the discounted permit fee or permit fee for a current permit plus a permit fee for the entire licensing year following, and issue a permit or permits for both periods.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 1262, ch. 580, §§ 4A, 4B, eff. June 17, 1965; Acts 1967, 60th Leg., p. 106, ch. 50, § 1, emerg. eff. April 17, 1967.]

#### Art. 7.24. Penalties

If any distributor, wholesale dealer, retail dealer or distributing agent shall

(a) fail to keep any of the records required to be kept by the provisions of this Chapter, or

(b) if any distributor, wholesale dealer or retail dealer shall sell any cigarettes upon which a tax is required to be paid by this Chapter without at the time having a valid permit, or

(c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or

(d) make a false or incomplete report to said Comptroller, or

(e) if any distributing agent shall store any unstamped cigarettes in the State or distribute or deliver any unstamped cigarettes within this State without at the time of said storage or delivery having a valid permit, or

(f) if any person affected by this Chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.25. Information Confidential

All information derived or obtained by the Attorney General or the Comptroller from any such in-

spection of the books and records as is authorized in this Chapter, and all information secured, derived or obtained by the Attorney General or the Comptroller from any record, report, instrument, or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential; and no record, report, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter shall be open to public inspection, and all such information, records, reports, instruments and copies thereof shall be used by the Attorney General and the Comptroller solely for the purpose of enforcing the provisions of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.26. Penalty for Disclosure of Records

Any employee of the Attorney General or of the Comptroller who

(a) gives to any person, firm or corporation, any information secured, derived or obtained from the inspection or examination of books or records authorized under the terms of this Chapter or from the records, reports, instruments and/or copies thereof, required to be furnished under the terms of this Chapter, or

(b) permits the inspection by any person, firm or corporation, of any of the reports, records, instruments, or copies thereof required to be furnished under the terms of this Chapter, or

(c) gives a copy or copies of any such records, reports, instruments, or copy thereof required to be furnished under the terms of this Chapter to any person, firm or corporation, or

(d) gives any information to any person, firm or corporation concerning the records of all or any parts of the reports, records, instruments, or copies thereof required to be furnished under the provision of this Chapter, shall be guilty of a misdemeanor and shall be punished by confinement in the County Jail for not more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or by both such fine and imprisonment; provided, however, that it shall not be an offense under the terms of this Chapter for an employee of the Attorney General or of the Comptroller to furnish any such information as is hereinabove described to any other employee of the Attorney General or of the Comptroller where such information is furnished or given for use in the enforcement of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.27. Inspection

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in cigarettes, or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where cigarettes are

manufactured, produced, made, stored, transported, sold or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the cigarette business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in cigarettes. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.28. Record of Carriers

Every common and contract carrier transporting cigarettes in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all cigarettes so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the number or quantity of cigarettes transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of cigarettes shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all cigarettes in the custody of such carriers.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.29. Unstamped Cigarettes

(1) Except as herein provided, it shall be unlawful for any person to have in his possession for sale, distribution or use, or for any other purpose, cigarettes upon which a tax is required to be paid by this Chapter, without having affixed to each individual package of cigarettes the proper stamp evidencing the payment of such tax and the absence of said stamp on said individual package of cigarettes shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the non-payment of said tax.

(2) No person, other than a common carrier, shall transport within this State cigarettes, upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

(3) No person shall use, sell, offer for sale or possess for the purpose of use or sale, within this State, any previously used stamp or stamps or attach any such previously used stamp to an individual package of cigarettes.

(4) No person shall, except as otherwise provided, purchase stamps from any person other than the Treasurer or sell stamps purchased from said Treasurer or sell or distribute cigarettes in this State without stamps affixed to each individual package regardless of whether such sale or distribution constitutes a first sale or otherwise.

(5) No person shall knowingly use, consume or smoke, within this State, cigarettes upon which a tax is required to be paid without said tax having been paid.

(6) No person shall use any artful device or deceptive practice to conceal any violation of this Act or mislead the Comptroller in the enforcement of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.30. Seizure

(1) All cigarettes on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Cigarette Tax Law, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such cigarettes for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purpose, found in the place, building or vehicle where such cigarettes are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such cigarettes, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

(2) The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisal thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

(3) The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

(4) In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury and shall be allocated as the Cigarette Tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law under the Maximum Fee Bill, which fee shall be collected as Court costs out of the proceeds of such sale.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.31. Sale by Comptroller

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the cigarettes and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500), or less, by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the County where the seizure was made, describing the property seized and stating the time, place and cause of their

seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the Court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and, after deducting expense of seizure, appraisal, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Cigarette Tax levied hereunder is apportioned.

In the event the cigarettes seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be unstamped, the officers selling the same shall, upon sale thereof, affix or cause to be affixed, the stamps so required and deduct the expense thereof from the proceeds of such sale.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.32. Seizure or Sale no Defense

The seizure, forfeiture and sale of cigarettes and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.33. Waiver Permitted; Penalty

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of

any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall first affix to each of the individual packages of cigarettes seized the amount and value of the stamps necessary to represent the tax, and in addition to the stamps required, pay into the State Treasury through the Comptroller a sum equal to the value of the stamps required to be affixed to such cigarettes. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

If upon examination of invoices or other investigation the Comptroller finds that cigarettes have been sold without stamps affixed as required in this Chapter, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the stamp tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.34. Disposition of Money

All moneys collected by the Comptroller under the provisions of Article 7.33 of this Chapter, after payment of all costs and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.35. Duties of Comptroller, Rules and Regulations

(1) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Chapter and the collection of revenues hereunder.

(2) The Treasurer may promulgate rules and regulations hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

(3) The Treasurer shall promulgate rules and regulations providing for the exchange, or replacement without cost, of new stamps for any stamps affixed to any package of cigarettes which cigarettes have become unfit for use or consumption, or unsalable, and which cigarettes have been destroyed or returned to the manufacturer, upon proof satisfactory to the Treasurer that such cigarettes have become

unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 7.36. Penalties

(a) Whoever shall make a first sale of any cigarettes without a stamp being then and there affixed to each individual package, or

(b) whoever shall sell, offer for sale, or present as a prize or gift any cigarettes without a stamp being then and there affixed to each individual package, or

(c) whoever shall sell cigarettes in any quantities less than individual package, or

(d) whoever shall knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package, or

(e) whoever possesses in violation of any provisions of this Chapter, cigarettes upon which a tax is required to be paid, in quantities of less than ten thousand (10,000) cigarettes, or

(f) whoever shall knowingly cancel or mutilate any stamp affixed to an individual package of cigarettes for the purpose of concealing any violation of this Chapter, or with other fraudulent intent, or

(g) whoever shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(h) whoever shall mislead the Comptroller in the enforcement of this Chapter, or

(i) whoever shall refuse to surrender to the Comptroller upon demand any cigarettes possessed in violation of any provision of this Chapter, or

(j) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any cigarettes without at the time of said first sale having a valid permit, or

(k) make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or

(l) whoever as distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of cigarettes, or

(m) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell cigarettes without at the time of said sale having a valid permit, or

(n) sell cigarettes without at the time of said sale having a permit posted so as to be easily seen by the public, or

(o) whoever as distributing agent shall store or distribute unstamped cigarettes without at the time of said storage or distribution having a valid distributing agent's permit shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 7.37. Penalties**

(a) Whoever shall knowingly transport any cigarettes in quantities of more than forty (40) cigarettes without a stamp being then and there affixed to each individual package, or

(b) while transporting cigarettes shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or

(c) refuse to permit a full and complete inspection of his cargo by said authorized person, or

(d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or

(e) whoever shall use, sell, offer for sale or possess for the purpose of use or sale, any previously used stamps, or

(f) attach or cause to be attached to any individual package of cigarettes any previously used stamp, or

(g) use or consent to the use of any previously used stamps in connection with the sale or offering for sale of any cigarettes, or

(h) whoever shall purchase stamps from any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said purchase, or

(i) whoever shall sell any lawfully issued stamps to any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said sale, or

(j) whoever shall possess in violation of any provision of this Chapter, cigarettes upon which a tax is required to be paid in quantities of ten thousand (10,000) or more cigarettes, or

(k) whoever as distributor or distributing agent, or as the agent, employee or representative of a distributor or a distributing agent shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or

(l) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Chapter to be made, or

(m) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books and records required herein to be kept, or

(n) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the cigarette business that may be kept, or

(o) shall knowingly make any false entry or fail to make entries in the books and records required by

the provisions of this Chapter to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or

(p) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed in Article 7.36 of this Chapter overlap as to offenses which are also punishable under Article 7.37 of this Chapter, then the penalties prescribed by this Article shall apply and control all other penalties.

Venue of a prosecution under Articles 7.36 or 7.37 shall be in Travis County, Texas, or in the county in Texas where the offense occurred.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 7.38. Counterfeit Stamps**

Any person who shall print, engrave, make, issue, sell or circulate, or who shall possess or have in his possession, with intent to use, sell, circulate or pass, any counterfeit stamp, or who shall use, or consent to the use of, any counterfeit stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place or cause to be placed, on any individual package of cigarettes, any counterfeit stamp, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

Venue of a prosecution under this Article shall be in Travis County, Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 7.39. Enforcement Fund**

Two and one half per cent (2½%) of three-fourths (¾) of the gross revenue derived from the tax levied by this Chapter shall be set aside in a special fund subject to the use of the Comptroller to be expended in the administration and enforcement of the provisions of this Act and so much of the proceeds of two and one half per cent (2½%) of three-fourths (¾) of said tax and funds shall be and the same is hereby appropriated to the Comptroller for said purposes and same shall be paid monthly as needed.

Payment for the manufacturing or printing of the cigarette tax stamps and for any expenses incurred by the Board incident thereto shall be made from the revenue derived from the cigarette tax before such fund is allocated under the provisions of this Chapter and as much of said fund as may be necessary is hereby appropriated for such purpose; any unexpended portion of said funds so specified shall at the end of each biennium be paid in the proper

proportion to the funds to which the cigarette tax fund shall be apportioned.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 7.40. Supervision of Stamp Procurement**

The Director of the Cigarette Tax Division shall, in addition to the duties of supervising and directing the administration and enforcement of this provision of this Chapter, personally supervise the printing and manufacturing of all cigarette tax stamps under the contract as awarded by the Board of Control and he shall have possession and custody of, and be responsible for, all specification plans, photographs, impressions, drawings, electroplates, printing stones and any and all other property or equipment that may provide a means of reproducing, manufacturing or printing of cigarette tax stamps in the design selected by the Cigarette Tax Stamp Board. The said Director shall also be charged with the responsibility of inspecting the stamps after such stamps have been manufactured or printed and all sheets of stamps that do not meet the specifications required in the contract shall be rejected and destroyed by or under the direct personal supervision of said Director; and the Director shall have control of said stamps and be responsible therefor until delivery is made to the Treasurer.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 7.41. Nature of Tax**

The tax herein levied is intended by the Legislature to be an excise or use tax and not an occupation tax, but in the event that any Court of competent jurisdiction shall declare the tax levied herein to be an occupation tax, it is hereby specifically declared to be the intention of the Legislature that such holding shall not affect the validity of the remaining provisions of this Chapter, and in that event, one-fourth (1/4) of the net revenue derived from the tax levied herein shall be allocated to the Available School Fund and three-fourths (3/4) shall be allocated to the Clearance Fund established by House Bill No. 8, Acts Forty-seventh Legislature, Regular Session, 1941, page 269, Chapter 184, as amended.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**CHAPTER 8. CIGARS AND TOBACCO PRODUCTS TAX**

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**Art. 8.01. Definitions**

Whenever used in this Chapter:

(a) The word "Person" shall mean any individual, company, corporation, partnership, association, joint adventure, estate, trust or any other group or combination acting as a unit, and the plural, as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(b) The word "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Distributor" shall mean any and each of the following:

(1) Any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State from without the State any tobacco products for sale, use or consumption.

(2) Any person who makes, manufactures, or fabricates tobacco products in this State for sale, use, or consumption in this State.

(d) The word "Wholesaler" as used herein shall include dealers whose principal business is that of a wholesale dealer or jobber and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale or giving it away, or exposing the same where it may be taken or purchased or otherwise acquired by the retailer.

(e) The word "Retailer" as used herein shall include every dealer other than the wholesale dealer as defined above whose principal business is that of selling merchandise at retail, who shall sell or offer for sale cigars or tobacco products, irrespective of quantity or number of sales, giving the same away or exposing the same where it may be taken or purchased or otherwise acquired by the consumer.

(f) "Solicitor" shall mean any person representing a licensed non-resident supplier who shall solicit or take orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this State.

(g) The word "Consumer" shall mean a person who comes into possession of tobacco products for the purpose of consuming them, giving them away, or disposing of them in any other way.

(h) The words "First Sale" shall mean and include the first sale or distribution of cigars or tobacco products in intrastate commerce in the State of Texas or the first use or consumption of cigars or tobacco products within this State.

(i) The words "Tobacco Products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug-cut, crimp-cut, ready-rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including Cavendish, Twist, plug, scrap and any other kind and form of tobacco suitable for chewing, however prepared); and shall include any other articles or products made of tobacco or any substitute therefor, but shall not include snuff or cigarettes.

(j) The term "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers, and retail dealers, or to consumers within the State of Texas.

(k) The term "Drop Shipment" shall mean and include any delivery of cigars or tobacco products received by any person within this State when payment for such cigars or tobacco products is made to the shipper or seller, buyer, or through a person other than the consignee.

(l) The term "Cigar," as used herein, shall mean any roll of fermented tobacco wrapped in tobacco in any form. The main stream of smoke given off by a cigar shall be of alkaline reaction to litmus paper; and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper.

(m) The word "Dealer" shall include every person, firm, corporation, or association of persons who manufacture cigars or tobacco products for distribution, sale or use or consumption in the State of Texas. The word "Dealer" is also further defined as meaning any person, firm, corporation, or association of persons who imports cigars or tobacco products from any State or foreign country for distribution, sale, use, or consumption in the State of Texas.

(n) The word "Board" or "Board of Control" shall mean the Board of Control of the State of Texas.

(o) The word "Treasurer" shall mean the Treasurer of the State of Texas.

(p) The term "Retail Price" shall mean the price paid by the consumer for individual cigars or other tobacco products and shall be construed to mean the retail or selling price before adding the amount of the tax and shall be construed to mean the ordinary retail price.

(q) The term "Cigars containing a substantial amount of non-tobacco ingredients" shall mean cigars which contain sheet binder, sheet wrapper, or sheet filler or any combination of sheet binder, sheet wrapper, or sheet filler, regardless of the composition of such sheet wrapper, sheet binder, or sheet filler.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 2055, ch. 760, § 1, eff. Aug. 28, 1967.]

### Art. 8.02. Tax Levy and Rate

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per one thousand (1,000), one cent (1¢) for each ten (10) cigars or fraction thereof.

(b) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for not more than three and three-tenths cents (3.3¢) each, seven dollars and fifty cents (\$7.50) per one thousand (1,000).

(c) (1) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing no substantial amount of non-tobacco ingredients, having a factory list price of less than one hundred seventy dollars (\$170) per thousand (1,000), twelve dollars (\$12) per thousand (1,000).

(2) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing no substantial amount of non-tobacco ingredients, having a factory list price of one hundred seventy dollars (\$170) or more per thousand (1,000), fifteen dollars (\$15) per thousand (1,000).

(3) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing a substantial amount of non-tobacco ingredients, fifteen dollars (\$15) per thousand (1,000).

(4) All cigars described in this Paragraph (c) are presumed to contain a substantial amount of non-tobacco ingredients unless the report to the Comptroller made for the purpose of establishing the tax upon such cigars is accompanied by an affidavit, by the manufacturer when the manufacturer prepares such report or by both the manufacturer and the distributor, when the distributor prepares such report, stating that specific cigars described in such report contain no sheet wrapper, sheet binder, or sheet filler.

(d) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of

tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five percent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 2056, ch. 760, § 2, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1205, ch. 292, art. 6, § 1, eff. July 1, 1971.]

#### Art. 8.03. Tax on "First Sale"

The tax levied herein shall be paid only once to the State Treasurer by the person making the "first sale" in this State. Every person who makes a first sale or distributor of cigars or tobacco products in this State for any purpose whatsoever shall, at the time of such first sale or distribution, collect the tax imposed herein from the purchaser or recipient of such cigars or tobacco products, in addition to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner hereinafter provided. In each subsequent sale or distribution of cigars or tobacco products upon which the tax imposed herein has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said cigars or tobacco products in this State. No person, however, shall be required to pay a tax on cigars or tobacco products brought into this State on or about his person in quantities or amounts which would ordinarily retail at twenty-five cents (25¢) or less when such cigars or tobacco products are actually used by said person and not sold or offered for sale in this State.

[Acts 1959, 56th Leg., 3rd C.S., p. 131, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 131, ch. 28, § 1, eff. Nov. 7, 1961.]

#### Art. 8.04. Report to be Filed with Comptroller

On or before the tenth day of each calendar month every distributor shall file with the Comptroller in Austin, Travis County, Texas, on a form prescribed by the Comptroller, a report covering the preceding month which shall show such information as the Comptroller may require of cigars and tobacco products handled by said distributor during the preceding month including all such products purchased, received, acquired or ordered, all such products sold, distributed, used, lost or otherwise disposed of, all such products on hand at the beginning and end of said month, and such other information pertinent to cigars and tobacco products handled and the taxes due on said products as the Comptroller may require.

The distributor shall, at the time of making said report, pay to the State of Texas at the office of the Comptroller the taxes levied herein upon all cigars and tobacco products sold, used or otherwise disposed of by him during the preceding month, which said tax payment shall be in legal tender or in proper form of money order or exchange made payable to the State Treasurer.

If any distributor shall fail to file such report and pay tax as required by this Chapter, where some

shall be due, he shall forfeit five percent (5%) of the amount of tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of such penalties by suit shall be in Travis County, Texas. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1971, 62nd Leg., p. 1206, ch. 292, art. 6, § 2, eff. July 1, 1971.]

#### Art. 8.05. Records Required

(a) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said tobacco products and in addition thereto a book record in a well-bound book which will provide complete information of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said tobacco products were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail, the number and kind of tobacco products received on which tax has been paid, and, if a distributor, the number and kind of tobacco products received on which tax has been paid, and an inventory or inventories on the first of each month, showing the number and kind of tobacco products on hand on which tax has been paid.

(b) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of tobacco products, regardless of whether or not the tax is due upon said tobacco products under the provisions of this Chapter, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a

distributor, the quantity and kind of tobacco products sold, and if the sale is by a distributor the number and kind of tobacco products upon which required tax has been paid, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of tobacco products. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided however, that when tobacco products are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further that where a distributor or wholesale dealer sells tobacco products at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for tobacco products to be sold at retail and such stock of tobacco products invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well-bound book or books of all tobacco products sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(c) Provided, that every person engaged in the business of selling tobacco products in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(d) A salesman in the employ of a manufacturer, and handling only the products of his employer, who engages in the business of selling or distributing tobacco products on which tax has been paid in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesman shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said tobacco products.

(e) "Solicitors" engaged in the business of soliciting orders for tobacco products for shipment to points within this State shall keep in Texas for a period of two (2) years for inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for tobacco products for such shipments which record shall include the quantity and kind of tobacco products ordered or shipped, from whom ordered or shipped, the full name and correct address of the purchaser, the date said tobacco products were ordered, and if available, the date said tobacco products were shipped. Such record shall be kept for all tobacco products shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if

said solicitor is given credit for or furnished records of such orders or such shipments.

All invoices, bills of lading, freight bills, way bills, express receipts, requisitions, and copies of orders required to be kept by the provisions of this Chapter, shall be kept separate and distinct from any records of other merchandise handled by the person required to keep such records.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.06. Sale of Permits and Fees

(a) Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of tobacco products upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars (\$25) if for a distributor's permit, or a fee of Fifteen Dollars (\$15) if for a wholesale dealer's permit, or a fee of Five Dollars (\$5) if for a retail dealer's permit. Said applications shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth:

(a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer;

(b) the principal office, residence and place of business in Texas for which the permit is to apply;

(c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses.

The Comptroller may require any other information as he may desire in said applications. No distributor, wholesale dealer or retail dealer shall sell any tobacco products until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that the Comptroller may issue a joint permit as a distributor, wholesale dealer, retail dealer, or distributing agent for both cigarettes and tobacco products, in which case only one permit fee shall be paid by the permit holder. Provided, further, that any distributor manufacturing, importing, or acquiring in any other manner, tobacco products for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make

the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor, provided further, that the Comptroller shall be authorized to accept any tax from any distributor acquiring tobacco products for his own personal use or consumption and not for sale or other disposal.

(b) Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a nonassignable consecutively numbered permit, designating the kind of permit and authorizing the sale of tobacco products in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provision of this Chapter or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any tobacco products from such place of business until a new permit is granted or the suspension of the old permit removed.

Application for permit should be accompanied by remittance in cash, postal or express money order, or Austin exchange for the required amount. Any permit issued in exchange for a "personal" check will be conditioned upon final payment of such "personal" check, and may be revoked and cancelled by the State Comptroller after five (5) days notice to the dealer that payment of his check has been refused by the bank upon which drawn. No dealer shall make any sale or distribution of tobacco products after such revocation. Upon receipt of the necessary funds to redeem such dishonored check the State Comptroller may remove the suspension of the permit at his discretion. The permit when revoked shall be subject to recall and seizure by the State Comptroller.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells tobacco products at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell tobacco products from or by means of a tobacco products vending machine, train, automobile, airplane, boat or other vehicle, the serial number of said vending machine, the make, motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and

number of said train, the name of the airplane, the name of the boat, shall be shown on the application.

Permits shall be displayed on each tobacco products vending machine in a place easy to be seen by the public and officials authorized to inspect them. Such permits shall not be folded in a manner that will cover any of the information thereon. Permits assigned to trains shall be posted in the car where tobacco products are displayed or offered for sale. Permits assigned to automobiles or trucks shall be posted in a conspicuous place in the cab or driver's seat of such vehicle.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.07. Solicitor's Permit and Fee

No individual shall offer for sale or solicit any order in this State for the sale of any tobacco products for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permit holder to solicit orders for the sale of tobacco products and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor, and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar (\$1) per year or part thereof, and the permit shall expire on the last day of February, but may be renewed upon like application and upon payment of another fee in the amount prescribed. Such permit holder shall, on the fifth day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for tobacco products, said copies to show the quantity and kind of tobacco products ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said tobacco products were ordered and any other information which may be required by the Comptroller; and the failure of such permit holder to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

If any person shall offer for sale or solicit any order in this State for the sale of tobacco products for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 8.08. Bonds**

(a) Every distributor who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the first sale of cigars and tobacco products or of taxes incurred upon the use of cigars and tobacco products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000). Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from its effective date for a period of one year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Chapter or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding year by a renewal certificate acceptable to the Comptroller which said renewal certificate, when and if issued, shall have all the force and effect of an original bond.

(b) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one month if, in his opinion, an existing bond has become insufficient. If any distributor licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty (30) day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided with fifteen (15)

days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(c) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of The University of Texas may be legally invested. Such cash or securities shall be released within sixty (60) days after the cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller. The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover any taxes, costs, penalties, and interest found to be due said State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed. Provided, suit may be filed against any surety or sureties on any bond furnished by a distributor, without resorting to or exhausting the assets of such distributor or without making said distributor, as principal obligor to said bond, a party to said suit. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 8.09. State to Have Preferred Lien**

All taxes, penalties, and cost of auditing as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include manufacturing plants, storage plants, warehouses, office buildings and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all tobacco products of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until ex-

hausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.10. Suit for Tax, Evidence

If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the quantity of tobacco products sold by such distributor or his representatives, upon which such tax penalty, and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered tobacco products, whether from a transportation company or otherwise, such report or audit, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.11. Venue

Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Chapter shall be in a Court of competent jurisdiction, in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.12. Availability of Records

Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, boat, or airplane, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller after the stocks are delivered from said vending machine, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

All tobacco products vending machine operators shall keep, at the place designated in the application to be the permanent place where records will be kept, a complete record of all tobacco products vending machines possessed, showing date each tobacco products vending machine was received from the seller, serial number of each tobacco products vending machine, present location of each tobacco prod-

ucts vending machine, date each tobacco products vending machine was placed on location, current permit number of each tobacco products vending machine, and date of expiration of each permit. If the tobacco products vending machine is sold or disposed of give name and address of the recipient of the tobacco products vending machine.

Provided that if a vending machine from which tobacco products are to be sold, has a valid cigarette dealer's permit, it will not be required for the vendor to apply for an additional permit for vending tobacco products. It will be necessary for this record to be shown in the requirements as described herein.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.13. Vending Machines

It is expressly provided that no occupation tax shall be collected from any person vending tobacco products by means of a vending machine for the privilege of selling tobacco products only by means of such machines other than the permit fee herein imposed for each machine.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.14. Forfeiture or Suspension of Permits

If any distributor, wholesale dealer or retail dealer has violated any provision of this Chapter, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to any one whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no tobacco products shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.15. Allocation of Revenues

The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from payment of tax.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.16. Application for Permit, Issuance, Records, Reports

(a) Every distributing agent in this State now engaged or who desires to become engaged in the

business of storing non-tax paid tobacco products previously sold in interstate commerce and received in interstate commerce for distribution on delivery only upon order received from without the State, shall within thirty (30) days from the effective date of this Chapter, file with the Comptroller an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars (\$100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(b) Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated, a nonassignable, consecutively numbered permit authorizing the storing and distribution of non-tax paid tobacco products within this State when such distribution is made upon interstate orders only. Permits shall be renewable at the expiration thereof upon the payment of another fee in the amount prescribed.

(c) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all tobacco products received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said tobacco products, or copies, thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said tobacco products.

(d) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of tobacco products made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, and name and address of the person to whom delivered, the invoice number, the bill of lading or

way bill number, the quantity and kind of tobacco products delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.17. Penalties

If any distributor, wholesale dealer, retail dealer or distributing agent shall

(a) fail to keep any of the records required to be kept by the provisions of this Chapter, or

(b) if any distributor, wholesale dealer or retail dealer shall sell any tobacco products upon which a tax is required to be paid by this Chapter without at the time having a valid permit, or

(c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or

(d) make a false or incomplete report to said Comptroller, or

(e) if any distributing agent shall store any tobacco products, on which the tax has not been paid, in the State or distribute or deliver any tobacco products on which the tax has not been paid, within this State without at the time of said storage or delivery having a valid permit, or

(f) if any person affected by this Chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or in any other Court having jurisdiction. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.18. Inspection

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in tobacco products or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where tobacco products are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept

incident to the conduct of the tobacco products business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in tobacco products. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of tobacco products, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.19. Record of Carriers

Every common and contract carrier transporting tobacco products in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all tobacco products so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the kind or quantity of tobacco products transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of tobacco products shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all tobacco products in the custody of such carrier.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.20. Unlawful Possession, Evidence

Except as herein provided, it shall be unlawful for any person other than a distributor to have in his possession for sale, distribution or use, or for any other purpose, tobacco products upon which a tax is required to be paid by this Chapter, without having the proper evidence showing tax to be paid, and the absence of such evidence shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the non-payment of said tax.

No person, other than a common carrier, shall transport within this State tobacco products upon which a tax is required to be paid, without having evidence of tax payment on said tobacco products or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting tobacco products for a full and complete inspection of the cargo carried.

No person shall knowingly use, consume or smoke, within this State, tobacco products upon which a tax is required to be paid without said tax having been paid.

No person shall use any artful device or deceptive practice to conceal any violation of this Chapter or mislead the Comptroller in the enforcement of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.21. Seizure, Sale by Comptroller

All tobacco products on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Tobacco Products Tax Law, and all tobacco products which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such tobacco products for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purposes, found in the place, building or vehicle where such tobacco products are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a Court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such tobacco products, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisal thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and Court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the

sheriff of said county. In the event the defendant in said proceeding is a non-resident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and Court costs, shall be paid into the State Treasury and shall be allocated as the tobacco products tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law under the maximum fee bill, which fee shall be collected as Court costs out of the proceeds of such sale.

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the tobacco products and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500) or less by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to Comptroller, he

shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the county or district attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expense of seizure, appraisement, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Tobacco Products Tax levied hereunder is apportioned.

In the event the tobacco products seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be non-tax paid, the officers selling the same shall, upon sale thereof, cause to be paid, the required tax and deduct the expense thereof from the proceeds of such sale.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.22. Seizure or Sale No Defense

The seizure, forfeiture and sale of tobacco products and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this Chapter or from liability to pay penalties provided by this Chapter, with or without suit therefor.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.23. Waiver Permitted; Penalty

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall first pay the tax due on tobacco products seized, the amount and value of the tax necessary to represent the tax, and in addition to the tax required, pay into the State Treasury through the Comptroller a sum equal to the value of the tax required to be paid on such tobacco products. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection. If upon examination of invoices or other investigation the Comptroller finds the tobacco products to be sold without having been tax paid as required in this Chapter, he shall have the power to require of such person, to pay into the

State Treasury through him a sum equal to twice the amount of the tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of a report showing tax payment to cover non-tax paid tobacco products purchased by him, the prima facie presumption shall arise that such tobacco products were sold without reporting and remitting tax due. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.24. Disposition of Money

All moneys collected by the Comptroller under the provisions of Article 8.23 of this Chapter, after payment of all cost and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.25. Duties of Comptroller; Rules and Regulations

(a) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Chapter and the collection of revenues hereunder.

(b) The Comptroller shall promulgate rules and regulations providing for the allowance for credit of taxes paid on tobacco products where such tobacco products have become unfit for use or consumption, or unsaleable, and which tobacco products have been destroyed or returned to the manufacturer, upon proof satisfactory to the Comptroller that such tobacco products have become unfit for use or consumption or unsaleable and have been destroyed or returned to the manufacturer.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.26. Misdemeanors, Penalties

(a) Whoever shall make a first sale of any cigars or any tobacco products without the tax having been paid or accounted for by a distributor holding a valid distributor's permit, or

(b) whoever shall sell, offer for sale, or present as a prize or gift any tobacco products on which the tax has not been paid or accounted for by a distributor holding a valid distributor's permit, or

(c) whoever shall knowingly consume, use or smoke any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributor's permit, or

(d) whoever possesses in violation of any provision of this Chapter tobacco products upon which a tax in an amount of not more than Fifty Dollars (\$50) is required to be paid, or

(e) whoever shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(f) whoever shall mislead the Comptroller in the enforcement of this Chapter, or

(g) whoever shall refuse to surrender to the Comptroller upon demand any tobacco products possessed in violation of any provision of this Chapter, or

(h) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any tobacco products without at the time of said first sale having a valid permit, or

(i) shall make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or

(j) whoever as a distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of tobacco products, or

(k) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell tobacco products without at the time of said sale having a valid permit, or

(l) shall sell tobacco products without at the time of said sale having a permit posted so as to be easily seen by the public, or

(m) whoever as distributing agent shall store or distribute tobacco products on which the tax has not been paid without at the time of said storage or distribution having a valid distributing agent's permit, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.27. Felonies, Penalties

(a) Whoever shall knowingly transport any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributor's permit, or

(b) while transporting tobacco products shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or

(c) refuse to permit a full and complete inspection of his cargo by said authorized person, or

(d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises, where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or

(e) whoever shall possess in violation of any provision of this Chapter tobacco products upon which a tax in an amount of more than Fifty Dollars (\$50) is required to be paid, or

(f) whoever as distributor or a distributing agent, or as the agent, employee, or representative of a distributor or distributing agent, shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or

(g) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Chapter to be made, or

(h) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee, or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books or records required herein to be kept, or

(i) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the tobacco products business that may be kept, or

(j) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Chapter to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or

(k) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished, by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed elsewhere in this Chapter overlap as to offenses which are also punishable under Article 8.27 of this Chapter, then the penalties prescribed by this Article 8.27 shall apply and control all other penalties.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.28. Venue for Felonies

Venue of a prosecution under the preceding Article shall be in Travis County, Texas, or in the County of Texas, where the offense occurred.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.29. Fees for New Permits Prorated

Permits required by Articles 8.06, 8.08 and 8.16 of this Chapter issued after the effective date of this Chapter shall expire the last day of February following issuance. From the effective date of this Chapter the Comptroller shall prorate the fees for new permits required by Articles 8.06 and 8.16 of this Chapter by allowing a discount computed by quarters of the licensing year. The permit year shall be from the first day of March through the last day of February.

Each permit holder required to obtain a permit under Articles 8.06, 8.08 and 8.16 of this Chapter who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay in addition to the permit fee a late application fee of One Dollar (\$1), which shall be paid to the Comptroller at the time the permit fee is paid.

When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Chapter the permit holder shall pay a service fee of Five Dollars (\$5) in addition to the permit fee.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.30. Floor Stocks Taxed, Rate of Tax, Penalty

Every person having possession of any tobacco products taxable under this Chapter for the purpose of sale on the effective date of this Chapter shall immediately inventory the same and file a report of such inventory with the Comptroller of Public Accounts and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the tax due on such tobacco products computed at the rates provided in this Chapter. Such person shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller.

Failure or refusal to render such inventory shall be deemed sufficient grounds for refusal by the Comptroller to issue a permit required by this Chapter, and in addition thereto, any person failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 8.31. Payment of Store Tax by Retailer

The permit and bond required under Articles 8.07 and 8.08 of this Chapter shall not be required from any retailer, as that term is defined herein, who pays a store tax to this State, and who certifies to the Comptroller at the time this Act becomes effective and at each time such retailer pays a store tax that he sells items taxed under this Chapter.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

### CHAPTER 9. MOTOR FUEL (GASOLINE) TAX

#### Article

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**Art. 9.01. Definitions**

The following words, terms and phrases shall, for all purposes of this Chapter, be defined as follows:

## (1) "Motor fuel" means

(a) all products commonly or commercially known or sold as gasoline including natural, absorption, casinghead and drip gasolines, regardless of their classification or uses; and

(b) any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in propelling motor vehicles, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit; provided, however, the term "motor fuel" shall not include liquefied gases which would not exist as liquids at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute; and provided further, that the term "motor fuel" shall not include commercial solvents or naphthas which have a distillation range of one hundred fifty degrees (150°) Fahrenheit or less, or raw petroleum products or petro-chemical intermediates, when used as or sold for use in production or manufacture of plastics, detergents, synthetic rubber, herbicides, insecticides, or other chemicals or products which are not prepared, advertised, offered for sale or sold for use as fuel for generating power in internal combustion engines.

(2) "Motor vehicle" means every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highway. Tractors, combines, and other vehicles not required to be so licensed shall be deemed to be motor vehicles to the extent they

are operated upon the public highway with motor fuel on which the tax is required to be paid.

(3) "Vehicle tanks" shall mean an assembly used for the transportation, hauling, or delivery of liquids, comprising a tank, which may be one compartment or may be subdivided into two (2) or more compartments, mounted upon a wagon, automobile, truck, or trailer, together with its accessory piping, valves, meter, etc. The term "compartment" shall be construed to mean the entire tank whenever this is not subdivided; otherwise, it shall mean any one of those subdivided portions of the tank which is designed to hold liquid.

(4) "Distributor" shall mean and include every person who refines, distills, manufactures, produces, or compounds motor fuel or blending materials in this State, or imports or causes to be imported motor fuel or blending materials into this State, or in any other manner acquires or possesses said products, for the purpose of making a first sale, distribution or use of said products in this State; and said term shall also mean and include any wholesale dealer or jobber of motor fuel who desires to purchase motor fuel without paying the tax to the distributor selling said products when the motor fuel is purchased for taxable resale, distribution, or use thereof by said wholesale dealer or jobber in this State. The said term shall also include any person who produces or is responsible for the production of the product commonly known as "drip gasoline" unless said drip gasoline is totally destroyed, burned, or otherwise rendered incapable of use as motor fuel or blending material.

(5) "Distribution" shall mean and include any transaction, other than a sale, in which ownership or title to motor fuel, or any derivative of crude oil or natural gas, passes from one person to another.

(6) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation (public, private, or municipal), trustee, agency, or receiver.

(7) "Dealer" shall mean and include any person who as the operator of a service station or other retail outlet delivers motor fuel into the fuel supply tanks of motor vehicles, boats or aircraft owned or operated by others.

(8) "Public highway" shall mean and include every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, maintenance, or repair.

(9) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(10) "First sale" shall mean, except as otherwise provided herein, the first sale or distribu-

tion in this State of motor fuel, produced, refined, compounded, imported into, or otherwise acquired in said State; provided that when motor fuel has been purchased tax free under the terms of this Chapter, the first resale or distribution of said motor fuel for any purpose other than a tax free sale duly authorized as such by the Comptroller shall, for the purposes of this Chapter, mean and constitute a "first sale."

(11) "Refund Motor Fuel" shall mean motor fuel used, sold, or disposed of for any purpose for which a refund of the tax paid thereon is authorized by law. And any motor fuel so used or disposed of shall be construed to have been used or disposed of for "refund purposes."

(12) "Refund Dealer" shall mean any dealer, distributor, or other person who engages in the selling of refund motor fuel, or who appropriates for his own use and consumption motor fuel on which a refund of the tax paid on such motor fuel is authorized by this Chapter.

(13) The term "tax-free," as applied to the sale or purchase of motor fuel, shall mean the sale or purchase of said motor fuel on authority granted by the Comptroller under the terms of this Chapter without collecting or paying the tax on said sale or purchase.

(14) "Wholesaler" or "Jobber" shall mean and include any distributor as defined or other person who purchases tax paid motor fuel at wholesale from a duly licensed distributor for resale or distribution at wholesale to dealers, or for resale or distribution at wholesale to dealers and bulk users.

(15) "Bulk User" shall mean and include any person who purchases tax paid motor fuel for delivery in quantities of twenty-five hundred (2500) gallons or more per delivery into storage facilities maintained by him primarily for delivery of such motor fuel into fuel supply tanks of motor vehicles.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., pp. 1800, 1801, ch. 689, §§ 1, 1a, eff. Sept. 1, 1967; Acts 1971, 62nd Leg., p. 2031, ch. 626, §§ 1, 2, eff. Aug. 30, 1971.]

Sections 1 to 6 of the 1971 Act amended this article, arts. 9.02, 9.07 and 9.13. Sections 7 to 9 thereof provided:

"Sec. 7. Saving Clause. All taxes, penalties and interest incurred and all liens created and bonds executed to secure their payment under any laws repealed or amended by this Act prior to its effective date, are hereby declared to be legal and valid obligations to this State; and any offense committed or any fines or penalties incurred under any laws repealed or amended by this Act prior to its effective date, shall not be affected by the repeal or amendment of any such laws but the punishment of such offenses and recovery of such fines, penalties and interest shall take place as if the laws repealed or amended had remained in force.

"Sec. 8. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable.

"Sec. 9. Repealer. All laws or parts of laws in conflict herewith are, so far as such confliction exists, hereby repealed and this Act shall prevail over any conflicting provisions of law."

#### Art. 9.02. Rate of Tax; Allowances for Handling and Evaporation

(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first

sale, distribution, or use of motor fuel in this State an excise tax of five cents (5¢) per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of five cents (5¢) per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him, and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax of five cents (5¢) per gallon has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any motor vehicle upon the public highways of this State.

It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise.

(2) The tax on two percent (2%) of the taxable gallons of motor fuel sold or distributed in this State shall be allocated to the persons selling, distributing or handling motor fuel in this State which allocation or allowance shall be deducted by the distributors in the payment to the State of Texas of the taxes herein levied and shall be apportioned among the persons selling, distributing and handling motor fuel in this State as follows:

I. One percent (1%) to the distributor making the first taxable sale or distribution of such motor fuel and paying the tax levied hereunder to the State of Texas for the expense of collecting, accounting for, reporting and remitting the taxes so collected and for keeping records.

II. One-half of one percent ( $\frac{1}{2}$  of 1%) to wholesalers or jobbers who pay taxes to a distributor on motor fuel purchased for resale or distribution at wholesale to dealers or bulk users to cover losses by evaporation, temperature changes in the motor fuel and ordinary handling from the time the motor fuel is acquired tax paid by said wholesalers or jobbers until its sale or distribution and delivery to purchasers.

III. One-half of one percent ( $\frac{1}{2}$  of 1%) to dealers, or bulk users to cover losses by evapora-

ration, temperature changes in motor fuel or other handling losses from the time the motor fuel is delivered to the storage facilities of said dealers or bulk users until it is sold or delivered into the fuel supply tanks of motor vehicles. If title to motor fuel consigned to a dealer or bulk user remains in the consignor until it is delivered into the fuel supply tanks of motor vehicles, the consignor shall be entitled to such allowance or allocation.

In the sale and distribution of motor fuel in this State, if any person performs more than one (1) of the functions or activities of distributor, wholesaler or jobber, dealer or bulk user, he shall be entitled to the apportionment or allowance for each such function or activity, but provided the aggregate allowance shall never exceed the total amount of two percent (2%) authorized herein.

The intent and purpose of the above allowance or allocation to wholesalers or jobbers or dealers and the extension herein of such allowance or allocation to include bulk users, is to fully reimburse persons acting in such capacities for losses sustained by them from evaporation, temperature changes and ordinary handling of motor fuel, and to facilitate the payment of tax refunds without volume adjustments of motor fuel purchased tax paid and thereafter used in other states by distributor-users; and it is expressly provided that the tax shall be computed and paid or collected and paid over to the State on the gross or volumetric gallons of taxable motor fuel sold or distributed to such wholesalers or jobbers, dealers or bulk users, as shown by the Comptroller's measurement certificate issued for the vehicle tank making such deliveries, or as shown by any other measuring device approved by the Comptroller.

Nothing herein shall be construed as prohibiting volume correction of motor fuel under accepted practices when sold or distributed to or between licensed motor fuel distributors.

Pursuant to rules and regulations to be prescribed by the Comptroller, the allocation or allowance hereinabove provided shall be distributed to the persons entitled thereto as follows:

(1) Every distributor who makes a first sale or distribution of motor fuel to a wholesaler or jobber, or other distributor, upon which said first sale or distribution the tax is required to be collected and paid over to this State shall, after setting out the tax separately on the manifest as required by this Chapter, deduct one percent (1%) from the amount of such tax and the balance shall be the amount such distributor shall be entitled to collect from such purchaser; and

(2) every wholesaler, jobber or distributor who makes a sale, resale, or distribution of motor fuel upon which the tax is required to be collected, to a dealer, consignor, or bulk user of said motor fuel shall, after setting out the tax separately on the manifest as required by this

Chapter, deduct one-half of one percent ( $\frac{1}{2}$  of 1%) from the amount of such tax and the balance shall be the amount such wholesaler or jobber or distributor shall be entitled to collect from such purchaser.

(3) The tax herein imposed shall be posted separately from the price of the motor fuel, wherever sold in this State.

(4) No tax shall be imposed upon the sale, use, or distribution of any motor fuel, the imposing of which would constitute an unlawful burden on interstate commerce, and no tax shall be imposed upon the sale of any motor fuel for export from the State of Texas (including both sales in interstate and foreign commerce) where the motor fuel is delivered to a common carrier, ocean-going vessel (including ship, tanker or boat), or a barge, and is moved forthwith outside of this State. Provided, however, that the Comptroller may require satisfactory evidence of any such sale, use, distribution or delivery. In the event this Article is in conflict with the Constitution of the United States or any Federal law, with respect to the tax levied upon the first sale, distribution, or use of motor fuel in this State, then it is hereby declared to be the intention of this Article to impose the tax levied herein upon the first subsequent sale, distribution, or use of said motor fuel which may be subject to being taxed.

(5) Provided, that the tax imposed herein shall be in lieu of any other excise or occupational tax imposed by the State or any political subdivision thereof on the sale, use, or distribution of motor fuel.

(6) When a distributor imports motor fuel into or exports motor fuel from the State of Texas in the fuel supply tanks of motor vehicles having an aggregate capacity of more than thirty (30) gallons per vehicle, the amount of motor fuel consumed by him within this State shall be deemed to be such proportion of the total amount of such motor fuel consumed in his entire operations within and without this State as the total number of miles traveled on the public highways within this State bears to the total number of miles traveled within and without this State.

(7) In the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it shall be prima facie presumed that not less than one (1) gallon of motor fuel was consumed for every four (4) miles traveled. Provided, however, that if a distributor furnishes evidence sufficient and satisfactory to the Comptroller that records cannot be acquired from all of his vehicle operators in time to file reports within the time prescribed by law accounting for the amount of motor fuel consumed and the miles traveled in his operations as provided in (6) above, the Comptroller may agree to accept reports with the tax computed on a fixed mileage basis by which the miles traveled within the State will be divided by the mileage factor acceptable to the Comptroller to determine the amount of motor fuel consumed in his operations

upon the highways of this State. It is expressly provided, however, that whenever an audit made by the Comptroller from the records of any such distributor shows that a greater amount of fuel was consumed than was reported by the distributor for tax purposes, said distributor will be liable for the tax on any additional amount shown, and any penalties and interest due thereon.

[Acts 1959, 56th Leg., 3rd C.S., ch. 187, § 1; Acts 1963, 58th Leg., p. 1114, ch. 432, § 1, eff. Sept. 1, 1963; Acts 1967, 60th Leg., p. 1801, ch. 689, § 2, eff. Sept. 1, 1967; Acts 1971, 62nd Leg., p. 1201, ch. 292, art. 5, § 1, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 1208, ch. 293, § 1, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 2031, ch. 626, § 3, eff. Aug. 30, 1971.]

Section 2 of the amendatory act of 1963 provided: "All laws or parts of laws that conflict herewith are, insofar as such confliction exists, hereby repealed and this Act shall prevail over any conflicting provision of law. However, all taxes, penalties and interest, accruing to the State of Texas and all allocations made therefrom before the effective date of this Act shall be and remain valid obligations."

Acts 1971, 62nd Leg., p. 1208, ch. 293, which, by section 1 amended subsec. (1), provided in sections 7 and 8:

"Sec. 7. This Act takes effect on July 1, 1971, on the condition that it is passed by a vote of at least two-thirds of all members elected to each House as required by Section 39, Article III, Constitution of the State of Texas. Otherwise, this Act takes effect on September 1, 1971.

"Sec. 8. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 9.03. Reports

(1) Every distributor who shall be required to collect the tax levied by this Chapter upon the first sale or distribution of motor fuel in this State, or who shall be required to pay the tax levied herein upon motor fuel used by said distributor, shall upon or before the 25th day of each calendar month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, the amount of such tax required to be collected during the calendar month next preceding and the amount of such tax required to be paid upon motor fuel used by said distributor during said preceding calendar month, and at the same time, such distributor shall make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such distributor, or his representative in charge, which shall show the date said report was executed, the name and address of said distributor, and the month which the report covers, and which report shall show separately by gallons the motor fuel on hand at the beginning and at the end of the month, and complete information of all motor fuel handled during the month, including motor fuel purchased or received in interstate commerce, motor fuel purchased or received in intrastate commerce, reflecting separately the quantity received with the tax paid and the quantity received without the tax having been paid, motor fuel refined, motor fuel acquired by blending, motor fuel sold in interstate commerce, motor fuel sold in intrastate commerce, motor fuel sold and exported, motor fuel sold to the United States Government, motor fuel sold to a distributor for further refining, processing, blending, or for exportation upon which no tax was collected, motor fuel lost by fire or other accident, motor fuel lost by refinery shrinkage,

evaporation, or other losses, and motor fuel used and consumed by the distributor and his representatives. The said report shall also show complete information by gallons of all blending materials purchased, acquired, sold, used, and lost by fire or otherwise, during the month the report covers, and the beginning and ending inventories of such blending materials. Said report shall also show a complete record of the number of barrels of crude oil refined and the number of cubic feet of gas processed. Provided that where a qualified distributor has not sold, used, or distributed any motor fuel during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any distributor to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every distributor, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for the period covered by the report.

(2) Provided further, that every person selling motor fuel in export or interstate commerce only, and every person selling motor fuel upon which no tax is required to be paid under the provisions of this Chapter, shall nevertheless be required to keep the same records and make the same reports to the Comptroller, accounting for the motor fuel so sold, that the provisions of this Chapter require a distributor to keep and make.

(3) If any distributor shall fail to remit proper taxes collected upon the first sale or distribution of motor fuel, or taxes due upon the use of motor fuel in Texas, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the distributor shall pay as additional penalty any reasonable expenses included by the Comptroller in such audit. Provided, however, that all funds paid to the Comptroller as expenses incurred in making audits shall be placed in the General Revenue Fund of the State.

(4) When it shall appear that a distributor to whom the provisions of this Chapter shall apply has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any motor fuel during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such distributor for the current period with the total amount of taxes so erroneously paid, or said distributor may file claim for refund of the taxes erroneously paid. Such credit shall be allowed or the tax refund claim paid before any penalties and interest shall be applicable.

(5) Reports. Every distributor selling motor fuel in this state for use in aircraft, or for resale for such

purpose, shall attach to each monthly report required by law to be filed with the Comptroller by each distributor a schedule which shall become a part of such report and shall show complete information of all sales of motor fuel marketed by such distributor as aviation or aircraft motor fuel in such form as the Comptroller may require. The Comptroller is hereby authorized to prescribe records to be kept and reports to be made by distributors and refund dealers in whatever manner and form he deems necessary to determine the amount of motor fuel, used or sold for use in aircraft on which claim for refund of the tax is not made, and the failure or refusal to keep any such records or to make any such reports shall constitute cause for the cancellation of the permit or refund of dealer's license of those who fail or refuse to comply therewith.

(6) Every distributor who imports into this State motor fuel in motor vehicle fuel supply tanks having an aggregate capacity of more than thirty (30) gallons per vehicle shall file, as a part of the monthly report required of distributors, schedules as the Comptroller by regulation may require, showing the mileage traveled and fuel purchased and consumed in motor vehicles operated into and from the State of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 254, ch. 130, § 1, eff. Aug. 28, 1961; Acts 1961, 57th Leg., p. 817, ch. 371, § 1, eff. Aug. 28, 1961; Acts 1967, 60th Leg., pp. 1801, 1802, ch. 689, §§ 3, 4, eff. Sept. 1, 1967.]

#### Art. 9.04. Penalties

(1) All taxes collected hereunder by any distributor, or by any director, officer, agent, employee, trustee, receiver of such distributor, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Chapter.

(2) If any such distributor or any director, officer, agent, employee, trustee, receiver of such distributor, or any person, shall wilfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Chapter, on or before the date such payment is due as provided by this Chapter, such distributor or such director, officer, agent, employee, trustee, receiver of such distributor, or such person, shall be guilty of a felony and shall be punished by confinement in the state penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any distributor, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such distributor, or any director, officer, agent, employee, trustee, receiver of such distributor, or by such person, which said money has come into the possession of or that is in

the care of or under the control of such director, officer, agent, employee, trustee, receiver of such distributor, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver of such distributor, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment. [Acts 1969, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.05. Tax-Free Sales

(1) The Comptroller may authorize and permit any person producing natural gasoline, casinghead gasoline or drip gasoline, or any derivative or condensate of crude oil or natural gas, in their natural and unrefined state, or any nonoperating interest owner in a gasoline plant, or any person operating a pipeline as a common carrier, or any licensed distributor of motor fuel in this State to make a sale, resale, or distribution of such products or of motor fuel, without collecting the tax levied herein, to any distributor holding a valid permit under the terms of this Chapter, when such distributor purchasing the same has, in the opinion of the Comptroller, a satisfactory and sufficient bond, and when the product is sold and purchased for the purpose of exportation, further refining, further processing, further treating, blending or compounding with other products to produce motor fuel, or non-motor fuel products, or for resale to the Federal Government for the exclusive use of said Federal Government, or for resale for some one (1) or more of such purposes and not otherwise.

(2) The Comptroller may also authorize and permit any licensed distributor to make sales or distributions of motor fuel without collecting the tax to any other licensed distributor purchasing said motor fuel for resale or distribution of said product at wholesale when said other licensed distributor holds a valid distributor's permit and has, in the opinion of the Comptroller, a satisfactory and sufficient bond to justify such tax-free purchases.

Every such distributor who shall be authorized and permitted to purchase motor fuel without paying the tax thereon for the purpose of resale or distribution of said products at wholesale, shall collect and pay over to the State of Texas at the time and in the manner provided in this Chapter, a tax at the rate of five cents (5¢) per gallon upon the first sale or distribution of said motor fuel made thereafter for any purpose other than a tax-free sale authorized by the Comptroller, and shall pay said tax at the rate aforesaid upon each gallon of motor fuel used or unaccounted for by said distributor during the calendar month next preceding the month said tax payment is required to be made, it being the

intent hereof that said distributor shall on or before the 25th day of each calendar month report and pay to the State of Texas all taxes due on motor fuel purchased tax-free and thereafter sold, resold, distributed, used or unaccounted for during the calendar month next preceding. Any motor fuel purchased tax-free which is unaccounted for at the end of each calendar month shall be prima facie presumed to have been sold or used for taxable purposes.

The Comptroller may, upon request from any distributor, issue a certificate of authority to make sales of motor fuel without collecting the tax, under the terms and conditions provided in this Chapter, which certificate shall show the date issued, the names of the seller and purchaser of said motor fuel, the quantities authorized, and the period of time and the conditions under which said motor fuel may be sold and distributed tax-free to the purchaser thereof, and any distributor who shall make sales of motor fuel in Texas without holding a valid certificate of authority or who shall make sales of motor fuel in excess of the quantities authorized shall be liable for the tax imposed upon the first sale or distribution of said motor fuel. The certificate of authority to make tax-free sales of motor fuel shall be subject to revocation for failure or refusal by the seller or purchaser of said motor fuel to comply with any provisions of this Article or any rule and regulation duly promulgated by the Comptroller, or for the violation of the same, and said certificate of authority shall be revoked forthwith upon the failure of any distributor to report and pay all taxes due and owing the State of Texas within the time prescribed by this Article, or at the time fixed by the Comptroller for making periodical reports and tax payments, and no further tax-free sales shall be made to a distributor named in any certificate of authority after said certificate has been revoked until such certificate has been reinstated or a new certificate of authority has been issued.

(3) Provided further, that any producer, pipeline operator, or licensed distributor who shall make any sale or distribution of motor fuel as provided herein, shall be required to make and keep all the records and manifests required of a distributor in Article 9.09, and shall be required to make and file with the Comptroller the return or report required by Article 9.03, showing all the information set out therein. When motor fuel is sold or distributed tax-free under authority issued by the Comptroller, the manifest required to be issued shall bear the notation that said product is sold for the purpose of resale to the Federal Government, exportation, further refining, blending, or resale at wholesale, whichever the case may be. Provided, further, that every producer and every pipeline operator shall qualify as a licensed distributor before selling the products named herein to any person other than a licensed distributor. All sales and distributions made without collecting the tax levied herein shall be made subject to any rules and regulations promulgated by the Comptroller.

(4) All taxes collected under the provisions of this Chapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State at the time and in the manner provided in this Chapter.

(5) It is the intent of this Article that when a certificate of authority has been issued to a licensed distributor to make tax-free sales to another licensed distributor, said sales shall be tax-free within the limitations set out in said certificate of authority. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.06. Application for Distributor's Permit

(1) From and after the effective date of this Chapter, all distributors of motor fuel in this State now engaged, or who desire to become engaged, in the sale, use, or distribution of motor fuel upon which the tax levied herein is required to be paid, shall file a duly acknowledged application for motor fuel distributor's permit with the Comptroller on a form prescribed by him, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributor transacts or intends to transact such business as distributor, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office addresses. The Comptroller may require in said application such other information as he may desire. Except as authorized in Article 9.05 of this Chapter no distributor shall make a first sale, use, or distribution of motor fuel until such application has been filed and a permit has been obtained.

(2) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every distributor a nonassignable, numbered permit authorizing the first sale, use, or distribution of motor fuel, or its substitute, in this State to be effective from the date of the issuance of said permit, until its expiration or cancellation. Every permit so issued, except permits classified and referred to in Section (3) of this Article as distributor-user's permits, shall be permanent and remain in full force and effect so long as the holder thereof has in force a bond, as required by Article 9.07 of this Chapter, or until such permit is cancelled or suspended. In the case of permits classified and referred to as distributor-user's permits, such permits shall remain in effect from the date of issuance of said permit until and including the following December 31st; however, the Comptroller may, if in his opinion any such distributor-user has fully performed all the conditions and requirements imposed upon him by this Chapter, including the payment to this State of all taxes due and accruing upon the use of motor fuel by said distributor-user, waive the requirement for filing the application for permit and automatically issue to said distributor-user a permit for the

ensuing calendar year. Every permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Chapter, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said distributor shall not sell, use, or distribute motor fuel upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any motor fuel tax, penalty, or interest under the provisions of this Chapter.

(3) Before importing motor fuel into this State in fuel supply tanks of motor vehicles having an aggregate capacity of more than thirty (30) gallons per vehicle, the importer shall reproduce the distributor's permit he is required herein to obtain from the Comptroller authorizing the first sale, use, or distribution of motor fuel in this State, and shall carry a photocopy of said permit with each such motor vehicle as it is being operated into or from the State of Texas by him. If an applicant for a distributor's permit to import motor fuel in fuel supply tanks of motor vehicles for taxable use upon the public highways of Texas does not intend to sell or distribute motor fuel to other persons within the State of Texas, the distributor's permit so issued to him may be classified and referred to as a distributor-user's permit.

The Comptroller by regulations may exempt from the permit and reporting requirements of this Chapter highway users who maintain records in Texas, and all or substantially all of whose fuel uses are purchased within the State of Texas with the tax paid thereon, and require in such instances an annual affidavit attesting to the intrastate or substantially intrastate fuel purchases; provided that the enforcement of this Act is not adversely affected thereby and that the Comptroller is satisfied that an equitable amount of motor fuel is purchased with the tax paid thereon in this State.

(4) Any carrier operating motor vehicles into or from this State for commercial purposes with fuel supply tanks exceeding thirty (30) gallons per vehicle, may obtain a trip-permit which shall be good for a period of not more than twenty (20) consecutive days beginning and ending on the dates specified on the face of the permit. A fee for each trip-permit shall be collected from the applicant therefor which shall be in an amount equivalent to the tax payable on the quantity of motor fuel that could be imported in the fuel supply tanks of such motor vehicles, but never less than Five Dollars (\$5). Such fees shall be in lieu of the use tax otherwise assessable against said permit holder for motor fuel imported and consumed in motor vehicles operating on the public highways of this State, and no reports shall be required with respect to such vehicles. All fees collected by the Comptroller shall be allocated to the

same funds to which the motor fuel taxes collected hereunder are allocated.

The above trip-permits may be issued in lieu of annual distributor-user permits if the applicant therefor does not operate motor vehicles into and from the State of Texas more than three times during any calendar year.

(5) (a) Except as otherwise provided in this Article, every distributor shall be liable for the tax on motor fuel imported into this State in fuel supply tanks of motor vehicles leased to him and used on the public highways of Texas to the same extent and in the same manner as motor fuel imported in motor vehicles owned or operated by such distributor and used on the public highways of Texas.

(b) Provided, however, a lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be a distributor-user when he supplies or pays for the motor fuel consumed in such vehicles, and such lessor may be issued a permit as a distributor when application and bond have been properly filed with the Comptroller for such permit.

(c) Every such lessor shall file with his application for a bonded distributor's permit a copy of the form lease agreement or service contract he usually enters into with his lessees. When the distributor's permit has been received by him such lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy thereof to be carried in the cab compartment of said motor vehicle, and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned, and the name of the lessee. Such lessor shall be responsible for the proper use of each photocopy of said permit issued and its return to him with the motor vehicle to which it is assigned.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1802, ch. 689, § 5, eff. Sept. 1, 1967; Acts 1973, 63rd Leg., p. 62, ch. 42, § 1, eff. April 18, 1973.]

#### Art. 9.07. Bond

(1) Before any permit shall be issued and before engaging in the first sale, use, or distribution of motor fuel upon which a tax is required to be paid in Texas, every distributor shall execute and file with the Comptroller a good and sufficient surety bond. Said bond shall be a continuing instrument and shall constitute a new and separate obligation, in the penal sum named therein, for each calendar year or portion thereof while such bond is in force; and provided further, said bond shall remain in effect until the surety on said bond is released and discharged as herein provided in this Article. The said bond shall be signed by said distributor and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and except as hereinafter provided, in an amount not less than One Thousand Dollars (\$1,000) nor more than Fifty Thousand Dollars (\$50,-

000) payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the distributor of all the conditions and requirements imposed upon him by this Chapter, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller with the approval of the Attorney General, expressly providing for the performance of said obligations and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, and all other taxes due and accruing upon the use of motor fuel by said distributor, and all costs, penalties, and interest provided in this Chapter, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any calendar year exceed the penal sum named therein. The amount of any bond required of any distributor shall be fixed by the Comptroller, and subject to the limitations herein provided, additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the distributor may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said distributor has collected and paid to the State for any month during the preceding six (6) months, or two (2) times the highest tax that could accrue on motor fuel purchased tax free or otherwise held in inventory during any said month, whichever is higher.

Provided, that when a distributor or other person produces, manufactures, refines, or acquires in any other manner any product of petroleum or natural gas for his own use and consumption as motor fuel and not to be sold or distributed, the Comptroller may accept a minimum bond in an amount of not less than Five Hundred Dollars (\$500); said bond to be in the form and substance and conditioned as hereinabove provided.

(2) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries on any bond or execution of any new bond or renewal of a permit shall invalidate any bond. A new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Provided further, that the Comptroller shall have the authority to require any distributor to make reports and remit to the State for taxes collected by him, or taxes accruing on motor fuel used by him, at shorter intervals than one (1) month at any time any maximum bond shall, in the opinion of said Comptroller, become insufficient. Should any distributor

fail or refuse to supply a new or additional bond within ten (10) days after demand, or shall fail or refuse to file reports and remit or pay the said tax at the intervals fixed by the Comptroller, said distributor's permit shall be cancelled by the Comptroller as herein provided.

(3) Any surety on any bond furnished by any distributor as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on receipt of notice of such request notify the distributor who furnished such bond, and unless such distributor shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said distributor in the manner herein provided. If such new bond shall be furnished by said distributor as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(4) That in lieu of giving a bond, any distributor may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until securities are substituted for the same, or a bond executed in lieu thereof, or until the Comptroller has made a complete and thorough investigation and authorized the same to be released; and, provided, in lieu of cash, or bond required by this Article, such distributor may deposit securities with the Comptroller that shall be acceptable to him. Said securities shall be placed in the State Treasury as other securities, and shall be of the same class as the Funds of The University of Texas may be legally invested in; or a distributor in lieu of furnishing a bond as otherwise required may with the written approval of the Comptroller supply an assignment, given either by himself or by others in his behalf, of a Certificate of Deposit, in a Texas bank or savings and loan association or institution, whose accounts necessarily are insured by an agency of the Federal Government, for an amount which is equal to or greater than the amount of bond required for which said deposit or account is being substituted.

When a distributor has filed with the Comptroller a bond in an amount of not less than Fifty Thousand Dollars (\$50,000) together with a current financial statement which said bond and financial statement, when reviewed by the Comptroller are, in his opinion, inadequate to cover certificates of authority to purchase motor fuel tax free in the quantities desired, such distributor may, with the Comptroller's

written permission and on forms approved by the Comptroller as security to the State for the additional gallons the distributor desires to purchase tax free, supply the Comptroller with a lien or encumbrance upon real property in favor of the Comptroller executed on a form recordable in the deed records of the county in which such property may be located, by the owner of such real property who may be either the distributor or other person acting in such distributor's behalf.

Nothing herein shall be construed as prohibiting the Comptroller from accepting a bond in excess of Fifty Thousand Dollars (\$50,000) from any distributor who desires to furnish bond in a larger amount for obtaining a certificate of authority for greater quantities in lieu of depositing securities, certificates of deposit, or lien or encumbrance on real property, or in addition to such deposits.

Provided, however, that if, in the opinion of the Comptroller, the cash, securities, certificates of deposit or liens, so deposited shall become insufficient for the purpose for which they were deposited, he shall demand additional cash, securities, certificates of deposit or liens on real property, and upon the failure or refusal of the distributor to supply the additional deposits within ten (10) days after demand, the Comptroller shall cancel the distributor's permit as herein provided. When default of payment of taxes collected upon the sale or distribution of motor fuel and accruing upon the use of motor fuel by said distributor, is made by any distributor who has money and/or securities deposited with the State Treasurer in lieu of a bond as herein provided, suit shall be instituted by the State and after the State has established its debt for delinquent taxes by final judgment of Court, money on deposit in the suspense account shall be withdrawn therefrom and shall be used to pay off and satisfy such judgment; and provided further, if securities, certificates of deposit or liens or encumbrances on real property are on deposit with the State Treasurer or Comptroller, such securities or certificates of deposit shall be sold by the Comptroller and said liens or encumbrances shall be foreclosed and the property sold and the proceeds of sale shall be used in paying off and satisfying said judgment and accrued Court costs and interest. Provided, however, the defaulting distributor may acknowledge in writing the correctness of the State's claim for taxes, costs, and penalties, and may authorize the withdrawal of said money or securities to pay on said claim without having suit filed.

When the Comptroller determines that all taxes, penalties, interest and court costs due by a distributor have been paid to this State, or that the need no longer exists for the securities, certificates of deposit, or liens or encumbrances on real property deposited with the Comptroller, he may issue appropriate release of such securities, deposits or liens.

Provided further, that the cash, securities or certificates of deposit or any unpaid portion thereof,

deposited by said distributor in lieu of surety bond, shall not be returned or refunded to any person except the distributor, unless the person claiming any right, title, and interest in and to said funds or securities, shall have declared said right, title, and interest in writing, executed jointly by said distributor and said claimant, under oath, and filed with the Comptroller at the time such deposit was made. Provided further, that suit may be filed against any surety or sureties on any bond furnished by a distributor, without first resorting to or exhausting the assets of said distributor or without making said distributor, as principal obligor in said bond, a party to said suit.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1971, 62nd Leg., p. 2033, ch. 626, §§ 4, 5, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 63, ch. 42, § 2, eff. April 18, 1973.]

Sections 3 to 5 of the 1973 Act provided:

"Sec. 3. Saving Clause. It is expressly provided that all existing bonds which have been issued for the calendar year, 1973, and are now in effect shall remain in full force and effect for the balance of the calendar year as if the law had not been amended, but all new bonds executed or issued after the effective date of this Act shall be subject to the provisions of this Act. It is further provided that all taxes, penalties, and interest incurred and all liens created and bonds executed to secure their payment under any laws repealed or amended by this Act prior to its effective date are hereby declared to be legal and valid obligations to this state; and any offense committed or any fines or penalties incurred under any laws repealed or amended by this Act prior to its effective date shall not be affected by the repeal or amendment of any such laws but the punishment of such offenses and recovery of such fines, penalties, and interest shall take place as if the laws repealed or amended had remained in force.

"Sec. 4. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable.

"Sec. 5. Repealer. All laws or parts of laws in conflict herewith are, insofar as such conflict exists, hereby repealed and this Act shall prevail over any conflicting provision of law."

#### Art. 9.08. Lien

All taxes, penalties, interest and costs due by any distributor under the provisions of this Chapter and all taxes collected and required to be paid by said distributor to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include refinery, blending plants, storage tanks, warehouses, office building and equipment, tank trucks or other motor vehicles, stocks on hand of every kind and character whatsoever used or usable in such business, including crude oil or other materials for the manufacture, refining, blending, or compounding of motor fuels and the refined products therefrom, and the proceeds from the sale of such materials and refined products, including cash on hand and in bank, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated devoted to such use, and each tract of land on which such refinery, blending plant, tanks, or other property is located, or which is used in carrying on such business.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act,<sup>1</sup> provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of

the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of a motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interests, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Article as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any distributor, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such distributor, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

<sup>1</sup> Civil Statutes, art. 6687—1.

#### Art. 9.09. Distributors' Records

(1) Every distributor shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete and well-bound book record of all crude oil and other oil or products from which such distributor may refine or blend any motor fuel or other derivatives of crude petroleum that is sold or used by him, and his record shall show the date of receipt, the name and address of the person from whom purchased, the means of delivery and the quantity in barrels, of all such crude oil and other oil or products; also it shall show all sales of the same as and when made from stocks on hand, the quantity refined or blended, and inventories on the first of each month. Provided further, a complete record in barrels or gallons shall be kept of all liquid by-products derived or obtained from any refining, absorption, or recycling operation. Said record shall also show separately the number of barrels or gallons of such products on hand at the first of each month and the number of barrels or gallons sold, used, or otherwise disposed of.

Every distributor shall also keep in Texas for a period of two (2) years, open to said inspection, a complete and well-bound book record of all motor fuel, casinghead gasoline, natural or drip gasoline and other derivatives or condensate of crude petrole-

um or natural gas, or their products, purchased or received by said distributor. Such records shall show the date received, from whom purchased or received, the quantity received, the commodity or kind of product received, and such other information as will provide a complete record of the disposition of said products. Said distributor shall also keep for a period of two (2) years a complete record of inventories on the first of each month of all motor fuel, casinghead gasoline, natural gasoline or drip gasoline, or other derivatives or condensates of crude petroleum, or natural gas, or their products.

(2) Every distributor shall keep also in Texas for a period of two (2) years, open to said inspection a complete record of each and every sale, distribution or use of motor fuel, crude oil, kerosene, naphtha, distillate, casinghead gasoline, drip gasoline, absorption and natural gasoline, and other derivative or condensates of crude oil or natural gas, including fuel oil and other liquid residues, regardless of whether or not a tax is due upon said products under the provisions of this Chapter; and providing that the record of each such sale, distribution, or use of such commodities shall include the date of any such transactions, the name and address of each purchaser or user, and the amount of any such commodity so sold or used. And it is especially provided that any such sale, distribution, or use of any of the foregoing commodities shall be recorded upon a form of manifest to be prescribed or approved by the Comptroller and furnished by the distributor. Said manifest shall be issued in not less than duplicate counterparts and numbered consecutively. Said manifest shall be printed and the counterpart shall be printed on paper of different color, and shall have printed thereon the name of the distributor, his address, the serial number of said manifest, and spaces shall be provided thereon wherein shall be shown the date of such sale, distribution or use, the purchaser or other recipient and his address, the quantity sold, the means of delivery, including the license number of and description if delivered into or by a motor vehicle or trailer, the number and initial if delivered by tank car, the name or description if delivered by boat or barge, and the opening and closing record of meter readings or tank gauges if delivered by pipeline, and the time of delivery into the tank wagon, trailer or other conveyance; provided, however, that rail shipments of motor fuel and other derivatives or condensates of crude products or natural gas shall be supported by regular bills of lading. Provided further, that the manifest shall reflect separately the tax involved in the sale of motor fuel apart from the cost thereof, less the tax. The manifest shall be properly made out and signed by both the distributor and the purchaser or recipient of said commodity. Every person receiving from a distributor any motor fuel and reselling or redelivering the same, shall likewise record each sale or delivery upon similar manifest. Provided, however, that manifests shall not be required upon retail sales in quantities of thirty (30) gallons or less.

(3) It is the intent and object of this Article to require that every person, except as herein expressly provided to the contrary, who shall transport any commodity required to be recorded upon a manifest shall carry with said commodity at all times a manifest covering said cargo, and said person shall issue a manifest to the purchaser or receiver of all or any part of the commodity so being transported, and to require that such purchaser or receiver shall receipt on said manifest for the quantity so delivered and received, and that one counterpart of the manifest shall be delivered to the purchaser, to be retained by him for the time and in the manner required herein, for inspection by the Comptroller and Attorney General, and that another counterpart shall be retained by the distributor or other seller for like purposes and periods. If no sale is involved in such transaction a notation showing such fact or information shall be recorded on said manifest. Provided further, that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel for sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities shall not be required to carry or issue a manifest for motor fuel in quantities of one hundred (100) gallons or less, when said motor fuel is contained and transported in the fuel tank connected to and feeding the carburetor of any motor vehicle owned or operated by said carrier or person, and is used exclusively for the propulsion of such motor vehicle and is not transported for sale, distribution or delivery to any other person. This exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel in any quantity for sale or distribution for sale.

Provided, however, that where a distributor markets his products through his own service stations, that as to said service stations, it will be sufficient to keep the records at said service stations, hereinafter required by this Chapter to be kept by dealers. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.10. Dealers' Records

Every dealer shall keep, at each place of business in Texas, for a period of two (2) years, for the inspection at all times of the Comptroller and the Attorney General, or their authorized representatives, the manifest furnished by the seller, as required herein, and in addition thereto a well-bound book record which will provide complete information of all motor fuels, naphtha, kerosene, distillate, gas oil, fuel oil and/or casinghead gasoline, natural gasoline, drip gasoline or absorption gasoline, and all other derivatives or condensates of crude oil or natural gas, purchased or received by him at each place of business, and inventories on the first of each month of all such products. Such record shall show the date received, the name and address of the person from whom purchased or received, the number of gallons, the designation by name of the par-

ticular kind of motor fuel or other products purchased or received, the point from which shipped or delivered, the point at which received, the number and initials of car if shipped by rail, the name of the boat or barge, if shipped by water, and the license number and description, if received by motor vehicle or trailer, and in addition, the total daily sales, designating the particular kind of motor fuel, kerosene, naphtha, distillate, gas oil, fuel oil, casinghead gasoline and/or natural gasoline, drip gasoline, absorption gasoline, or other derivatives or condensates of crude oil or natural gas, sold or delivered, whether the same be taxable or not under the provisions of this Chapter. Upon each sale or delivery of any of the commodities named herein at wholesale for the purpose of resale, and upon each retail sale, distribution or use of said commodities in quantities of more than thirty (30) gallons, every dealer shall be required to issue and keep for a period of two (2) years, a manifest made up as required by Art. 9.09 of this Chapter, giving full details of such sales, deliveries, distributions, or use, as said form manifest provides shall be given. The duplicate of said manifest shall be delivered to the purchaser or carrier and the original kept by said dealer. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.11. Carrier Records

(1) All common and contract carriers in this State shall keep for a period of two (2) years, open to inspection by the Comptroller or his authorized representatives, a complete record of each transportation of motor fuel, showing the date of transportation, the consignor and consignee, the means of transportation and the quantity and kind of motor fuel transported. Said record shall show such intrastate records separately from interstate records.

(2) All persons operating trucks, pipelines, and other conveyances as common or contract carriers in the transportation of motor fuel into and from this State, exclusive of railroads, shall render a sworn report to the Comptroller not later than the 20th of each month, on a form prescribed by said Comptroller, showing a description of the truck or other conveyances in which the same was transported, the date said motor fuel was transported, the consignor and consignee, and the quantity and kind of said motor fuel which was transported by such persons during the preceding month. There shall also be included in said report full data concerning the diversion of shipments en route as amount to a change from interstate to intrastate and intrastate to interstate commerce. Such report shall show the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of motor fuel. All persons operating railroads as common carriers in the transportation of motor fuel into and from this State shall, as and when requested by the Comptroller, and in such form as may be prescribed, render, not later than the 20th of the following month, a sworn report for the preceding month, or for such other period or periods as may be requested, showing

a description of the tank car or other conveyance in which the same was transported, and shall render such other information concerning the diversion of or change of shipments en route from interstate to intrastate commerce or intrastate to interstate commerce, as may be required by the Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.12. Liquid Residues

Every person operating a pipeline for the purpose of conveying or moving natural gas through such pipeline shall either collect and conserve for the purpose of sale, distribution, or use the liquid residue commonly known as "drip gasoline" which is formed and extracted from such pipelines, or if said product has no practical value to said person, he shall neutralize, burn, or otherwise destroy said product in a manner that will prevent its use as motor fuel in this State. If such drip gasoline is sold, distributed, or used as motor fuel, said person shall obtain the permit, make the reports, and keep the records of such sales, distributions, or use in compliance with the provisions of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.13. Claims for Refunds

(1) In all refund claims filed under this Article, the burden shall be on the claimant to furnish sufficient and satisfactory proof to the Comptroller of the claimant's compliance with all provisions of this Article; otherwise, the refund claim shall be denied.

(2) Any person (except as hereinafter provided), who shall use motor fuel for the purpose of operating or propelling any stationary gasoline engine, motorboat, aircraft, or tractor used for agricultural purposes, or for any other purpose except in a motor vehicle operated or intended to be operated upon the public highways of this State, and who shall have paid the tax imposed upon said motor fuel by this Chapter, either directly or indirectly, shall, when such person has fully complied with all provisions of this Article and the rules and regulations promulgated by the Comptroller, be entitled to reimbursement of the tax paid by him less any amount allowed distributors, wholesalers or jobbers, retailers or others under the provisions of Article 9.02(2) of this Chapter. Provided, however, no tax refund shall be paid to any person on motor fuel used in any construction or maintenance work which is paid for from any State funds to which motor fuel tax collections are allocated or which is paid jointly from any said State funds and Federal funds, except that when such fuel is used in maintenance of way machines, or other equipment of a railroad, operated upon stationary rails or tracks, then such railroad shall be entitled to a tax refund on such fuels.

(3) Any person desiring to sell to others, or to appropriate for his own use, refund motor fuel as defined herein, shall make separate application to the Comptroller for each separate place of business from which refund motor fuel will be sold, or appropriated for use, for a refund dealer's license to sell or

appropriate such product and it shall be unlawful to issue an invoice of exemption covering the sale or appropriation of refund motor fuel without possessing a valid refund dealer's license. The Comptroller shall make such examination of each application for license and the applicant therefor as he deems necessary and if in his opinion the applicant is qualified to perform the duties required of a refund dealer, and is otherwise entitled to the license applied for, a nontransferable license shall be issued by the Comptroller for the place of business named in the application. Each license so issued shall be continuous in force and effect until such time as the Comptroller shall require a renewal thereof, or until such license shall be terminated by the licensee or revoked or suspended by the Comptroller as provided by law.

No refund of the tax paid on any motor fuel shall be granted unless such motor fuel has been purchased from, or appropriated and used by, a refund dealer holding a valid license at the time of such purchase or use, except upon motor fuel exported, lost by accident, or purchased by the United States Government for its exclusive use.

Every refund dealer shall be required to maintain the records required of a dealer in this Chapter, and in addition each such refund dealer shall keep for a period of two (2) years for the inspection of the Comptroller and the Attorney General or their authorized representatives, the original copy of each invoice of exemption issued by such dealer. The license number of the refund dealer shall be inserted in the space provided on each invoice of exemption issued by him.

The Comptroller shall have the authority and it shall be his duty to revoke or suspend the license or licenses of any refund dealer who violates or fails or refuses to comply with any provision of this Chapter or any rule and regulation duly promulgated by the Comptroller. In the event the Comptroller revokes or suspends a license, the said license and all unissued invoices of exemption assigned to the dealer for said license shall be surrendered by the licensee to the Comptroller forthwith.

(4) When motor fuel is ordered or purchased for refund purposes the purchaser or recipient thereof shall state the purpose for which such motor fuel will be used or is intended to be used, and shall request an invoice of exemption which shall be made out by the selling refund dealer at the time of such delivery, or, if the motor fuel is appropriated for use by a refund dealer it shall be made out at the time the motor fuel is appropriated or set aside for refund purposes. The invoice of exemption shall state: the refund dealer's license number; the date of purchase and the date of delivery; the names and addresses of the purchaser and the selling dealer; the purpose for which such motor fuel will be used or is intended to be used; the number of gallons delivered, or appropriated for use; and any other information the Comptroller may prescribe. No refund shall be allowed unless an invoice of exemption is made out at

the time of delivery, except as hereinafter provided. If it be shown by evidence sufficient and satisfactory to the Comptroller that an invoice of exemption had been duly requested by a purchaser of refund motor fuel or his agent at the time of the purchase or delivery and that its failure to be issued was through no fault of the claimant, then the Comptroller may, if he finds the motor fuel has been used for refund purposes, issue warrant in payment of the claim.

The invoice of exemption shall be made out and executed in duplicate by the refund dealer, the duplicate of which shall be delivered to the purchaser of the motor fuel and the original shall be retained by the refund dealer at the place of business designated on his license for the time and in the manner herein provided. Each invoice of exemption shall be signed by the refund dealer and the person who purchases the motor fuel for refund purposes or a duly authorized employee or agent of said dealer or purchaser. But if neither the purchaser of the motor fuel nor an agent is present to sign the invoice of exemption at the time of delivery, the refund dealer shall mail or deliver the duplicate invoice of exemption to the purchaser within seven (7) days after delivery of the motor fuel.

(5) It shall be unlawful for any refund dealer, or any employee thereof, to prepare any claim for refund of tax paid on motor fuel purchased from said refund dealer, or to act in any capacity as agent or employee of any claimant for refund of tax paid on motor fuel purchased from said refund dealer by keeping his books, records, refund claim forms or other documents to be used or intended for use by said claimant in the preparation of his tax refund claim, and the Comptroller shall not approve the payment of any tax refund claim, in whole or in part, in which the claimant has permitted the seller of the motor fuel upon which tax refund is claimed, or any employee of said seller, to prepare or file his claim for tax refund, or to keep any books, records or documents used in the preparation or filing of said claim. Provided that the Comptroller may, after proper hearing as herein provided, cancel, suspend, or refuse the issuance or reinstatement of the license of any refund dealer who shall prepare or who shall permit any employee to prepare any claim for refund of tax paid on motor fuel purchased from said refund dealer by the claimant thereof, or who shall keep, or permit any employee to keep, any duplicate invoice of exemption for more than seven (7) days after it has been duly issued to a purchaser of refund motor fuel.

(6) Any person entitled to file claim for tax refund under the terms of this Article shall file such claim with the Comptroller on a form prescribed by the Comptroller within one (1) year from the date the motor fuel was delivered to him, or from the date the motor fuel was lost, exported or sold to the United States Government, and no refund of tax shall ever be made where it appears from the invoice of exemption or other evidence submitted, that the

sale or delivery of the motor fuel was made more than one (1) year prior to the date the refund claim was actually received in the Comptroller's office. The refund claim, with all duplicate invoices of exemption required by law to be issued with the sale of refund motor fuel included as a part of said claim, shall show the quantity of refund motor fuel acquired and on hand at the beginning and closing dates of the period covered in the refund claim filed.

If any claimant was not present when the refund motor fuel was used for any purpose, except in machines operated upon stationary rails or tracks, the Comptroller may require such affidavits as he may deem necessary to prove the correctness of the claim, from persons who were present and used or supervised the using of the refund motor fuel. The claim for tax refund shall include a statement that the information shown in each duplicate invoice of exemption attached to the tax refund claim is true and correct, and that deductions have been made from the tax refund claim for all motor fuel used on the public highways of Texas and for all motor fuel used or otherwise disposed of in any manner in which a tax refund is not authorized herein. If upon examination, and such other investigation as may be deemed necessary, the Comptroller finds that the claim filed for tax refund is just, and that the taxes claimed have actually been paid by the claimant, then he shall issue warrant due the claimant but no greater amount shall be refunded than has been paid into the State Treasury on any motor fuel, and no warrant shall be paid by the State Treasurer unless presented for payment within two (2) years from the close of the fiscal year in which such warrant was issued, but claim for the payment of such warrant may be presented to the Legislature for appropriation to be made from which said warrant may be paid.

If the refund motor fuel for which tax refund is claimed was used on a farm, ranch, or for any nonhighway agricultural purpose, the claim shall show the name and address of the claimant, the period covered in the claim, the total number of gallons delivered to him during such period, the total number of gallons used off the public highways and the purposes for which used, the total number of gallons delivered to vehicles for any use on the highway, and the number of gallons on hand at the beginning and at the end of the period of the claim. The claim shall also show the number and kinds of tractors, combines or other equipment in which the refund motor fuel was used, and shall show the number of automobiles, trucks, pickups and other licensed vehicles operated regularly by the claimant or his employees, on or in connection with the farm, ranch or other agricultural project during the period of the claim, and shall also contain a statement that the same is true and correct, and that the same is made subject to penalties of Article 1.12 of Chapter 1, Title 122A, Revised Civil Statutes of the State of Texas, 1925.

If the refund motor fuel was used in mining, quarrying, drilling, producing, exploring for minerals, or in construction, maintenance, repair work or in other functions similar to the above uses, a distribution schedule, or such other information as the Comptroller may require, shall be attached to and filed as a part of the refund claim which shall show the quantities of motor fuel delivered to and consumed in each vehicle or other unit of equipment used in such work during the period of the claim; provided, however, that no schedules shall be required to show the quantities of motor fuel used in machines operated upon stationary rails or tracks.

If the refund motor fuel was used in aircraft or motorboats, the claim shall show the make and description of such aircraft or motorboat and the quantities of motor fuel used during the period of the refund claim.

If the refund motor fuel was used for cleaning, or dyeing, or for industrial or domestic purposes, or was converted into a product other than motor fuel by any manufacturing or blending process, the claim shall show the purpose or purposes for which the motor fuel was used and the quantity used for each separate purpose.

Any person who shall file claim for tax refund on any motor fuel which has been used to propel a motor vehicle, tractor or other conveyance upon the public highways of Texas for any purpose for which a tax refund is not authorized herein, or who shall file any duplicate invoice of exemption in a claim for tax refund on which any date, figure or other material information has been falsified or altered after said duplicate invoice of exemption has been duly issued by the refund dealer and delivered to the claimant, shall forfeit his right to the entire amount of the refund claim filed.

(A6) The forfeiture provision of Subsection (6) of this Article shall not be construed as forfeiting a claim in which the amount of motor fuel deducted as taxable use on the public highway has been erroneously reported due to a mathematical error or a mistake in calculating the amount so used.

(6a) Allocation of unclaimed aircraft and motorboat fuel refunds to Available School Fund, Texas Aeronautics Commission Fund, and Special Boat Fund. Each month the Comptroller, after making the deductions for refund purposes as provided in Article 9.13, Section (13) of this Chapter, shall determine as accurately as possible the number of gallons of motor fuel used in aircraft and the number of gallons of motor fuel used in motorboats upon which the motor fuel tax has been paid to this State, and upon which refund of the tax thereon has not been made and against which a six (6) months' limitation has run for filing claim for refund of said tax (called "unclaimed refunds"), and from the number of gallons so determined the Comptroller shall compute the amount of taxes that would have been refunded under the law had claims for same been filed in

accordance with the law, and shall allocate and deposit such unclaimed refunds as follows:

(A) Twenty-five per cent (25%) of the revenues based on unclaimed refunds of taxes paid on motor fuel used in aircraft shall be allocated, deposited, and set aside in the State Treasury placed to the credit of the Available School Fund. The remaining seventy-five per cent (75%) of such revenues shall be allocated, deposited, and set aside in the State Treasury in a special fund to be called the Texas Aeronautics Commission Fund and the same shall be credited to, and is hereby appropriated to, the Texas Aeronautics Commission for the purposes set forth in this Section, and which said Texas Aeronautics Commission Fund shall be administered by the Texas Aeronautics Commission, together with any other funds appropriated by the Legislature, for the support, maintenance and operation of the Texas Aeronautics Commission in the performance of its safety and all of its other functions, duties and responsibilities as may be now or hereafter delegated to such Commission as prescribed by law, and also for the payment of the Commissioners, the director, assistant director, the staff, and for equipment and supplies, including aircraft and automotive equipment as authorized by law.

(B) Twenty-five per cent (25%) of the revenues based on unclaimed refunds of taxes paid on motor fuel used in motorboats shall be placed to the credit of the Available School Fund. The remaining seventy-five per cent (75%) of such revenues shall be allocated, deposited, and set aside in the State Treasury in the Special Boat Fund.

Any unexpended portion of the Texas Aeronautics Commission Fund not used, and on hand, at the end of each fiscal year shall be returned to the Comptroller of Public Accounts and he shall place the same to the credit of that fund to be used for the purposes stated herein.

(7) No tax refund shall be paid on motor fuel used in automobiles, trucks, pickups, jeeps, station wagons, buses, or similar motor vehicles designed primarily for highway travel, which travel both on and off the highway except as hereinafter provided. (a) If any such motor vehicles are used entirely for non-highway purposes except when propelled over the public highway to obtain repairs, oil changes, or similar mechanical or maintenance services, or when propelled over the public highway for other incidental purposes, or (b) if any such motor vehicles are operated exclusively during the period covered in any refund claim over prescribed courses lying between fixed terminals or bases, in which such vehicles travel the same mileage on the highway on each trip and the same mileage off the highway on each such trip, then in such cases a tax refund claim may be approved for the motor fuel used off the public highway in such vehicles, only when the claimant has kept a complete record of each trip traveled over

any part of the public highway showing the date, the highway mileage traveled and the quantity of motor fuel used in each of said vehicles during the period of such travel.

Any claimant who owns or operates more than one farm, ranch, or similar tract of land in the same vicinity, may move his farm tractors over the public highway for the purpose of transferring the base of operation of such tractors from one such farm, ranch, or other similar tract of land, to another, without measuring and deducting the refund motor fuel used in such incidental highway travel from his claim for tax refund. Motor fuel consumed in any tractor traveling more than ten (10) miles on the public highway during any one trip, shall not be construed to have been used for incidental purposes and shall not be subject to tax refund thereon, and motor fuel consumed in any tractor used in transporting produce, goods, wares, or other commodities or merchandise over the public highway, or consumed in any tractor used in custom work for others, or consumed in any tractor used upon the public highway for any purpose other than in moving said tractor from its base of operation on one farm, ranch, or other similar tract of land, to another within the limitations described hereinabove, shall be deducted, in the full amount so used, from any claim for tax refund filed by the user of said motor fuel.

A claimant may account for any part of refund motor fuel used upon the public highway, and not eligible for tax refund, by one of the following methods: (a) In motor vehicles which operate exclusively off the public highway except for incidental highway travel as described above, a claimant may drain all refund motor fuel from the fuel tank of any such motor vehicle, tractor or other conveyance before it moves upon the public highway, and then refill it with accurately measured motor fuel, which shall be deducted from the refund motor fuel set up in the claim if said fuel tank is refilled with refund motor fuel, or (b) claimant may, by accurately measuring the mileage any such vehicle, tractor or other conveyance travels upon the public highway, deduct from the refund motor fuel set up in the claim, an amount equal to one-fourth ( $\frac{1}{4}$ ) of a gallon for each mile or fraction of a mile any such motor vehicle, tractor or other conveyance travels on the public highway during the period of the claim, or (c) the Comptroller may prescribe regulations to permit any claimant who operates motor vehicles or other conveyance exclusively over prescribed courses lying between fixed terminals or bases in which the vehicles travel the same mileage on the public highways on each trip and the same mileage off the highway on such trip, to keep a record of the total miles traveled and the total quantity of accurately measured motor fuel consumed by each such vehicle during the period of the claim, from which the claimant may, for tax refund purposes, be permitted to calculate and determine the quantities used off the highway upon a basis of the average miles per gallon traveled by each such vehicle, or (d) if claim-

ant uses any part of refund motor fuel purchased on invoice of exemption in motor vehicles which operate regularly on the public highway in which no part of the motor fuel used is eligible for tax refund, he shall keep a complete record showing the date of each separate use or withdrawal for use, the make and description of the vehicle in which used, and the quantity so used, as measured through any type measuring device or standard measuring container acceptable to the Comptroller, and the quantity so used shall be deducted from the refund motor fuel set up in the claim filed by said claimant, or the Comptroller may in his discretion permit any claimant who has kept proper record to deduct from the refund motor fuel set up in his claim, a quantity equal to the true capacity of the fuel tank of the vehicle using any part of such refund motor fuel on the highway, each time such fuel tank is filled or serviced with refund motor fuel.

The records prescribed hereinabove shall be kept for a period of six (6) months from the date any claim, to which such records are pertinent, is filed in the Comptroller's office, and no tax refund shall ever be paid in whole or in part when a part of the motor fuel purchased on any invoice or exemption contained in the claim has been used to operate a motor vehicle, tractor or other conveyance of any kind or description upon any public highway for which a tax refund is not authorized herein, unless the claimant has kept for the time and in the manner herein provided a complete record of all such uses for which no tax refund is authorized.

(8) (a) Any person who shall export, or lose by fire or other accident motor fuel in any quantity of one hundred (100) gallons or more upon which the tax imposed herein has been paid, or who shall sell motor fuel in any quantity to the United States Government, for the exclusive use of said Government upon which the tax has been paid, may file claim for refund of the net tax paid to the State in the manner herein provided, or as the Comptroller may direct. Provided, that any bonded distributor holding a valid distributor's permit who establishes proof sufficient and satisfactory to the Comptroller of such export, loss by accident, or sale to the United States Government, may take credit for the net amount of the tax paid to the State on any subsequent monthly report and tax payment made to the Comptroller within one (1) year from the date of such exportation, loss or sale.

(b) It is expressly provided, however, that every bonded distributor shall be entitled to a credit equivalent to the tax rate per gallon paid on all motor fuel upon which the Texas motor fuel tax has been paid and which has thereafter been consumed in motor vehicles outside of this State. When the amount of credit herein provided to which the distributor is entitled for any calendar month exceeds the amount of tax for which such distributor is liable for motor fuel consumed in such vehicles during the same month, such excess shall under regulations promulgated by the Comptroller, be allowed as a

credit against the tax for which such distributor would be otherwise liable for any of the twelve (12) succeeding months; or upon claim filed with the Comptroller within one (1) year from the first day of any calendar month in which said motor fuel was used, such excess may be refunded as herein provided. Evidence of the mileage traveled and the gallonage consumed and the payment of the motor fuel tax, on such form as may be required by or is satisfactory to the Comptroller, shall be furnished by such distributor claiming the credit or tax refund herein allowed. Nothing herein shall be construed as requiring an invoice of exemption to be filed with the above described claim for tax refund.

(9) The right to receive a tax refund under the provisions of this Chapter shall not be assignable except as hereinafter provided. Any person residing or maintaining a place of business outside of the State of Texas who shall purchase motor fuel in any quantity of not less than one hundred (100) gallons and shall export the entire quantity so purchased out of Texas forthwith, may assign his right to claim tax refund to the licensed distributor from whom such motor fuel was purchased, or to any licensed distributor who has paid the tax on such motor fuel either directly or through another licensed and bonded distributor in Texas. When such distributor has secured the proof of export required by the Comptroller, he may file claim for refund of the tax paid on the motor fuel so exported, or, such distributor may take credit for an amount equal to said tax refund on any monthly report and tax payment filed with the Comptroller within six (6) months from the date the motor fuel was exported.

(10) For the purpose of enabling the Comptroller, and his authorized representatives, to ascertain whether or not refund motor fuel has been or is being used for the purposes for which it was purchased, they shall have the right to inspect the premises and the storage thereon where any motor fuel purchased on an invoice of exemption is stored or used and to examine any books and records kept by such purchaser, pertaining to such motor fuel, and it shall be a violation of the law for any person who has purchased or received motor fuel upon which an invoice of exemption has been issued to refuse permission to make such inspection or examination. It is further provided that the refusal of any such person to permit the inspection and examination described hereinabove shall constitute a waiver of all right to receive a tax refund on any claim under investigation.

(11) Any person who violates or fails to comply with any provision of this Article, or any rule and regulation duly promulgated by the Comptroller for the enforcement of the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Provided, however, that the penalties prescribed above shall not apply to offenses punishable under Art. 9.27 of this Chapter, but the said Art.

9.27 shall apply and control over such offenses. In addition to all other penalties prescribed in this Article, it is herein provided that a conviction for a violation of any provision of this Article shall, for the first offense, forfeit the right of said person to receive a tax refund for a period of six (6) months from the date of said conviction, and for each subsequent offense, shall forfeit the right of said person to receive a tax refund for a period of one (1) year from the date of said conviction.

(12) Concurrently with the issuance of a refund dealer's license the Comptroller shall issue and charge to the account of the licensee, a book or books of invoices of exemption which invoices shall be printed in duplicate sets and serially numbered. The Comptroller shall keep a record of the number of the books and their serial numbers issued to each refund dealer who shall be liable for a penalty in the amount of Five Dollars (\$5) for each book of invoices of exemption received by him for which he cannot properly account as hereinafter provided. Whenever a representative of the Comptroller audits the motor fuel records of a refund dealer, or whenever a refund dealer places a reorder for a book or books of invoices of exemption, such dealer shall prepare a written record showing the serial numbers of all books not previously accounted for and if such record does not account for each book previously issued to said refund dealer which has not been previously accounted for, the refund dealer shall be given thirty (30) days notice in writing to produce any missing book or to show that it has been used to cover sales of refund motor fuel made by said refund dealer. If the missing book or books are not accounted for within thirty (30) days from the date of said notice the refund dealer shall forfeit to the State of Texas as a penalty the sum of Five Dollars (\$5) for each book unaccounted for, which shall be paid to the Comptroller and allocated to the same funds to which the motor fuel taxes collected hereunder are apportioned. No further books of invoices of exemption shall be issued to any refund dealer who has incurred the penalty described hereinabove until said penalty has been paid. Any invoices of exemption which become mutilated or unusable shall be returned to the Comptroller by the refund dealer for credit to his account. The books of invoices of exemption shall not be transferable or assignable by such refund dealer unless such transfer or assignment is authorized by the Comptroller.

If any duplicate invoice of exemption issued to a purchaser is lost or destroyed said purchaser may make application to the Comptroller for forms to be issued and used in lieu of each lost duplicate.

The invoices of exemption bound in book form shall be furnished by the State of Texas, free of cost, to the refund dealer.

(13) All net moneys paid into the Treasury under the provisions of this Chapter, except the filing fees provided herein, and except the funds placed in the Available School Fund, the Texas Aeronautics Com-

mission Fund and the Land and Water Recreation and Safety Fund as provided in Section (6a) of this Article, shall be set aside in a special fund to be known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer showing the total maximum amount of refunds that may be required to be paid by the State out of such funds, or allocated to the Texas Aeronautics Commission Fund or the Land and Water Recreation and Safety Fund as provided in Section (6a) of this Article. The Comptroller shall on the 25th of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on the sale of motor fuel during the preceding month upon which a refund may be due, or which shall be allocated to the Available School Fund, the Texas Aeronautics Commission Fund, and the Land and Water Recreation and Safety Fund as provided in Section (6a) of this Article, and shall certify to the Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds, or to allocate the unclaimed refunds as provided in said Section (6a), and shall not distribute that part of said fund until the expiration of the time in which a refund can be made as provided by law, but as soon as said report has been made by the Comptroller and the maximum amount of refunds, and unclaimed refunds provided in said Section (6a), shall have been determined, he shall deduct said maximum amount from the total taxes paid for the month, and apply the remainder as provided by law. If a claimant has lost or loses, or for any reason fails to receive a warrant after the same has been issued by the Comptroller, then, upon satisfactory proof thereof, the Comptroller may issue such claimant a duplicate warrant as provided in Article 4365, Revised Civil Statutes of Texas, 1925 (as amended by Section 1, Chapter 219, Acts of the 53rd Legislature, Regular Session, 1953).

(14) So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds, and to allocate and deposit the unclaimed refunds to the Available School Fund, the Texas Aeronautics Commission Fund, and the Land and Water Recreation and Safety Fund as provided in said Section (6a), and if a specific amount be necessary then there is hereby appropriated and set aside for said purposes the sum of Two Hundred Thousand Dollars (\$200,000), or so much thereof as may be necessary. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one and one-half per cent (1½%) deducted originally by the distributor upon the first sale or distribution of the motor fuel shall be deducted in computing the refund if a refund is claimed, then the Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund, which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement

of this Article, as well as for payment of expenses in furnishing the form of invoice of exemption and other forms provided for herein, and the same is hereby appropriated for such purpose. All such filing fees shall be paid into the State Treasury and shall be paid out on vouchers and warrants in such manner as may be prescribed by law. In the event the refund on motor fuel used in aircraft or motorboats is not claimed within six (6) months, as provided by this Chapter, the Comptroller shall deposit the remainder as provided in said Section (6a).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 817, ch. 371, §§ 2 to 4; Acts 1961, 57th Leg., p. 1026, ch. 453, § 1, eff. June 16, 1961; Acts 1965, 59th Leg., p. 1580, ch. 686, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 1803, ch. 689, §§ 6, 7, eff. Sept. 1, 1967; Acts 1971, 62nd Leg., p. 2035, ch. 626, § 6, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 39, ch. 27, § 1, eff. Sept. 1, 1973.]

Section 2 of the 1973 Act amended Civil Statutes, art. 9206, § 27(c); sections 3 to 5 thereof provided:

"Sec. 3. The Comptroller shall transfer all funds in the Land and Water Recreation and Safety Fund to the Special Boat Fund on the effective date of this Act.

"Sec. 4. Any appropriation made for the fiscal years ending on August 31, 1974, and August 31, 1975, of funds from the Land and Water Recreation and Safety Fund shall be paid from the Special Boat Fund.

"Sec. 5. This Act takes effect September 1, 1973."

#### Art. 9.14. Transit Companies

Provided that in lieu of the tax levied by Article 9.02 of this Chapter, there shall be and is hereby levied and imposed an excise tax of Four Cents (4¢) per gallon or fractional part thereof upon the first sale, distribution or use of motor fuel in this State which said tax shall be applicable only when such motor fuel is used or consumed, or is to be used or consumed for the propulsion of transit vehicles owned by a transit company

(a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers;

(b) which holds a franchise from such city or town;

(c) whose rates are regulated by such city or town; and

(d) which pays to such city or town a tax on its gross receipts.

Said taxes shall be collected and paid in the same manner as the taxes levied by Article 9.02 of this Chapter.

Where the first sale, distribution or use of motor fuel in this State is to or by a transit company, and such company shall furnish to the distributor or seller, or to the Comptroller, as the case may be, an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it will use such motor fuel only in the operation of its transit vehicles, the distributor or seller, or the Comptroller, as the case may be, shall collect from such transit company only the taxes levied herein.

Where the distributor or seller has collected the tax levied by Article 9.02 of this Chapter on motor fuel thereafter used by a transit company, such

transit company may obtain a refund in the amount of one cent (1¢) per gallon or fractional part thereof by conforming to the refund procedure set forth in Article 9.13 of this Chapter, and by furnishing to the Comptroller an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used such motor fuel only in the operation of its transit vehicles.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.15. Inspection

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State and the amount of said tax accruing and due for motor fuel used by a distributor, refinery, dealer, user, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum or natural gas, or their products or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where motor fuel, crude petroleum, natural gas, or any other derivatives or condensates of crude petroleum, natural gas, or their products are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept, and any and all books and records that may be kept incident to the conduct of the business of said distributor, refinery, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum, natural gas or their products. The said authorized officers shall also have the right, as an incident to determining said tax liability or whether a tax liability has been incurred, to examine and gauge or measure the contents of all storage tanks, containers, and other property or equipment, and to take samples of any and all products stored therein. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.16. Permits; Cancellation, Renewal

The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any motor fuel distributor's permit, any user's permit, or any refund dealer's license, as provided under the terms of this Chapter, to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller, or any of the provisions of this Chapter, including any of the following offenses, which may be applicable to such permittee or licensee:

(a) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller,

from any report filed with said Comptroller or from any books or records required to be kept or any books or records authorized to be audited by the provisions of this Chapter;

(b) failure to file any return or report required under the provisions of this Chapter;

(c) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Chapter;

(d) failure to keep any books and records for the period and in the manner required herein to be kept;

(e) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records;

(f) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect;

(g) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, examine, measure, gauge, and take samples from any truck, tank, pump, or container said persons are authorized to inspect, examine, measure, gauge, and take samples from, under the provisions of this Chapter;

(h) the forging or falsifying of any invoice of exemption herein provided, or the making of any false statement in any claim for refund filed with the Comptroller under the provisions of this Chapter;

(i) the engaging in any business requiring a permit or license under the provisions of this Chapter, without obtaining and possessing a valid permit or license.

Before any permit or license may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or license, or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, or at any district office maintained by the Comptroller, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail or certified mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller, to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit or license is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State,

except by the provisions of this Article, shall become due and payable concurrently with the cancellation of such permit or license, and the permittee or licensee shall forthwith make a report covering the period of time not covered by preceding reports filed by said permittee or licensee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use, or distribution of motor fuel in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit or license.

An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit or license may be taken to the District Court of Travis County, Texas, by the aggrieved permittee, licensee, or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz:

(1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative;

(2) such proceedings shall have precedence over all other causes of a different nature;

(3) trial of all such cases shall commence within ten (10) days from the filing thereof;

(4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the Court pending a trial on the merits.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.17. Reports as Evidence

(1) If any distributor fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Chapter, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the amount of motor fuel sold by such distributor or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State, or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said distributor when signed and sworn to by such representatives as being made from said books and records of said distributor or from any books or records of any person from whom such distributor has bought, received, delivered, or sold motor fuel, crude oil, or the derivatives of crude oil, or natural gas, or from the books and records of any transportation agency, who has trans-

ported any of said products, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon the trial, by evidence adduced by said distributor.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond, or other instrument, referred to in this Chapter, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption, or publication, and without further proof of its contents, and the same provisions shall apply to any bond or other instrument referred to herein. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.18. Civil Penalties

If any person affected by this Chapter

(a) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter, or

(b) shall fail to keep for the period of time provided herein any books or records required, or

(c) shall make false entry or fail to make entry in the books and records required to be kept, or

(d) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or

(e) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives to inspect and examine any books or records, required to be kept, or any other pertinent books or records, incident to the conduct of his business that may be kept, or

(f) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or

(g) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where motor fuel, crude oil, natural gas, or any derivative or condensate thereof are produced, made, prepared, stored, transported, sold, or offered for sale or exchange, or

(h) shall refuse permission to said persons to examine, gauge, or measure the contents of any storage tanks, vehicle tanks, pumps, or other containers, or to take samples therefrom, or

(i) shall refuse permission to said persons to examine and audit any books, records, and gauge reports kept in connection with or incidental to said equipment, or

(j) shall refuse to stop and permit the inspection and examination of any motor vehicle transporting motor fuel upon demand of any person authorized to inspect the same, or

(k) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed, or

(l) shall forge or falsify any invoice of exemption herein provided, or

(m) shall make any false statement in any claim for refund of motor fuel taxes as to any material fact required to be given, or

(n) if any such person shall fail or refuse to comply with any provision of this Chapter or shall violate the same, or

(o) shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any distributor does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said distributor within the time prescribed by law, said distributor shall forfeit two per cent (2%) of the amount due; and if said taxes are not remitted or paid within ten (10) days from the date the Comptroller gives such distributor notice of the amount due in writing directed to the address shown in the application for permit filed by said distributor, an additional eight per cent (8%) shall be forfeited. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Provided, further, that before any restraining order or injunction shall be granted against the Comptroller, or his authorized representatives, to restrain or enjoin the collection of any taxes, penalties, and interest imposed by this Chapter, the applicant therefor shall pay into the suspense account of the State Treasurer all such taxes, penalties, and interest showing to be due and owing to the State by any audit made by the Comptroller, or his duly authorized representative, when said audit has been certified to by the Comptroller or his Chief Clerk, and has been signed under oath by said authorized representative as having been made from the books and records of said applicant, whether or not required to

be kept under the provision of this Article, or from the books and records of any person from whom such applicant has purchased, received, delivered, or sold motor fuel, or from the books and records of any transportation agency, which has transported such products to or from said applicant. Provided, however, that said applicant may, in lieu of paying said taxes, penalties, and interest into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient surety bond in the amount and form and under the conditions provided in Section 1, Chapter 310, Acts of the Regular Session of the Forty-fifth Legislature, and the provisions of said Section 1, Chapter 310, are hereby made applicable to any suit filed to restrain or enjoin the collection of any such taxes, penalties, and interest imposed by this Chapter. Any proceedings to enjoin the collection of such taxes, penalties, and interest, or the enforcement of any provision of this Chapter shall be in a court of competent jurisdiction in Travis County, Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.19. Comptroller's Authority

(1) For the purpose of enforcing the collection of the tax levied by this Chapter, and to enable the Comptroller to ascertain whether or not the tax has been paid or accounted for on all motor fuel and other products which can be used as motor fuel, which may be transported in this State, the said Comptroller and his authorized representatives are hereby vested with the power and authority to measure, calibrate and determine the capacity in gallons of any vehicle tank or other container in which motor fuel, blending materials, liquefied gases and liquid fuels are transported. The Comptroller is hereby given the power and authority to promulgate and enforce any rules and regulations, which he may deem necessary to the best enforcement of the provisions of this Article.

All vehicle tanks, and all devices designed to be attached thereto and used in connection therewith, and all other containers in which any of the foregoing products are transported, shall be of such design and construction that they do not facilitate the perpetration of fraud. Each compartment of said vehicle tank or other container shall be conspicuously marked on, or immediately under, the dome thereof with a designating figure, or letter and the capacity of said compartment and each delivery faucet shall be marked with the capacity and a corresponding figure or letter to indicate the compartment of which it is the outlet. In addition, the total capacity of all compartments of each vehicle tank shall be conspicuously marked in letters of not less than two (2) inches in height on the rear of each such vehicle tank. The Comptroller's test or certificate number shall also be printed on the rear of each vehicle tank. When a motor vehicle carrying a vehicle tank is equipped with side tanks or other auxiliary tanks or compartments, such additional tanks and compartments shall comply with all of the specifications

applicable to vehicle tanks. No vehicle shall transport motor fuel upon the public highways of this State with connection from any cargo tank or container to the carburetor for the purpose of withdrawing motor fuel from said cargo tank or container, and fuel tanks, including auxiliary fuel tanks shall be separate and apart from the cargo tank, with no connection by pipe, tube, valve or otherwise. It shall be a violation of this Article to sell or distribute motor fuel from any fuel tank or auxiliary fuel tank connected with the carburetor of any motor vehicle or to withdraw said motor fuel from any such fuel tank or auxiliary fuel tank for the purpose of sale. The measurement certificate shall be carried with the vehicle tank for which it is issued and the Comptroller or his authorized representatives shall have the authority to impound and hold any truck, for a period of not to exceed seventy-two (72) hours, until said certificate is produced. The owner of any vehicle tank or other container tested and measured may be required to pay a reasonable fee to any city or any person for the water used in the measurement of such tank or container.

If any vehicle tank or other container shall, after having been tested, become damaged, repaired or modified in any way which might affect the accuracy or measurement of its receipts and deliveries, it shall not again be used for the sale or transportation of motor fuel, blending materials, liquefied gases and liquid fuels until officially reinspected, and, if deemed necessary, retested and remeasured.

(2) From and after the effective date of this Chapter, and before using any vehicle tank or other containers in the transportation of motor fuel, blending materials, liquefied gases and liquid fuels, except in quantities of thirty (30) gallons or less in the fuel tank feeding the carburetor of the motor vehicle, every person shall have every such vehicle tank or other containers, subject to the provision of this Article, tested, measured and calibrated by a representative of the Comptroller and shall obtain a measurement certificate from said Comptroller, showing the capacity of each such vehicle tank and other container. Provided, however, that the Comptroller may, at his discretion, accept any weights and measures certificate issued by the Division of Weights and Measures of the Department of Agriculture, State of Texas, without retesting or remeasuring said vehicle tank or containers.

It is further provided that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel or other taxable petroleum products for the purpose of sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities, shall not be required to produce for inspection or measurement or to have tested, measured and calibrated, any fuel tank with a capacity not exceeding one hundred (100) gallons, connected to and feeding the carburetor of any motor vehicle owned or operated

by said carriers or said persons, when such fuel tank is used exclusively for furnishing fuel to propel the motor or engine of said motor vehicles, and none of the contents thereof is sold or transported for sale, distribution or delivery to any other person. Provided, however, that this exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel or other taxable petroleum products for sale or distribution for sale.

All authorized representatives of the Comptroller shall have the power and authority to inspect, test, measure, or remeasure vehicle tanks and other containers used to transport motor fuel, blending materials, liquefied gases and other liquid fuels, or containers from which said products are sold, or to correct, condemn or mark "out of order" any such vehicle tanks or containers which may be so constructed as to prevent accurate measurement or which are not constructed in conformity with the provisions of this Chapter or the rules and regulations promulgated hereunder.

(3) Whoever shall remove, obliterate, or change any measurement certificate, tag, marking or device made by any authorized representative of the Comptroller, or placed upon any vehicle tank or other container, or shall refuse or neglect to produce for inspection and measurement, at the time and place fixed by the Comptroller, not to exceed one hundred (100) miles from the point which is the customary base of operation of such truck, any vehicle tank or other container in his possession or under his control, or shall transport such products in any vehicle tank or other container which has been condemned or tagged "out of order" by any authorized representative of the Comptroller, or whoever shall fail to comply with any provision of this Article or any reasonable rule and regulation promulgated under the provisions of this Article, or shall violate the same, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.20. Authority to Stop and Examine

(1) In order to enforce the provisions of this Chapter, the Comptroller, his authorized representative, or any Highway Patrolman, Sheriff, Constable, and their deputies, and all other peace officers are empowered to stop any motor vehicle which might appear to be transporting motor fuel or other derivatives of crude petroleum or natural gas, or their products, as cargo, for the purpose of examining the manifest required to be carried, for examination of the commodity in transit, to take samples of the cargo, and for such other investigations as could reasonably be made to determine whether the cargo was motor fuel or other derivatives of crude petroleum, natural gas, or their products, and whether the manifest indicates that the State tax was a part of the consideration involved in the sale or distribution of any motor fuel carried. If, upon said examina-

tion, it is found that the driver of any such motor vehicle transporting motor fuel does not possess or refuses to exhibit a manifest required herein, or if said manifest carried is false or incomplete, said authorized officers shall impound and take possession of the said motor vehicle and its contents, and unless proof is produced within seventy-two (72) hours from the beginning of such impoundment that the motor fuel has been sold with the State tax as a part of the consideration therefor, said motor vehicle and its contents shall be delivered to the Comptroller or his authorized representatives for forfeiture and sale as hereinafter provided.

(2) All motor fuel on which taxes are imposed by this Chapter, which shall be found in the possession, or custody, or within the control of any person for the purpose of being sold, transported, removed, or used by him in fraud of this Motor Fuel Tax Law, and all motor fuel which is removed or is deposited, stored, or concealed in any place with intent to avoid payments of taxes levied thereon, and any automobile, truck, tank truck, boat, conveyance, or other vehicle whatsoever used in the removal or transportation of such motor fuel for such purposes, and all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for such purpose found in the place, building, or vehicle where such motor fuel is found may be seized by the Comptroller, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such motor fuel, vehicles and property seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff, or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable for a period of thirty (30) days, after which time, if no suit has been filed or summary proceedings begun for forfeiture as hereinafter provided, such property shall be subject to replevy.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place or person where and from whom such property was seized, and an inventory of same, and appraisalment thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the District or County Attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and against the owner or person in possession as defendant, if

known, and if unknown, then against said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, or defendants whose residence is unknown; provided, however, such proceedings may be heard at any time after ten (10) days from completion of the service of such process or the first publication of such notice. And in such cases, the court shall appoint an attorney to represent such defendant, who shall have the rights, duties, and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder by the Sheriff at public auction in the county of seizure, after ten (10) day's notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury, and, after crediting the motor fuel tax fund with the tax, penalties and interest due, the balance of said proceeds, if any, shall be allocated as the Motor Fuel Tax is herein allocated. In the event the District or County Attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law, which fee shall be collected as court costs out of the proceeds of such sale.

(3) In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the motor fuel and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500), or less, by the following summary proceedings:

(a) The Comptroller or his authorized representatives shall notify the person from whom such property was seized either in person or by registered or certified mail if said person's address is known and if unknown the Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place, and cause of their seizure, and requiring any person claiming such property, or any interest

therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(b) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, by final judgment in a court of competent jurisdiction as hereinabove provided, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the same with a certified copy of the report of receipt of the property seized, filed in his office, to the Attorney General, or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(c) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) day's notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expenses of seizure, appraisal, custody, and sale, he shall, after crediting the Motor Fuel Tax Fund with the tax, penalties, and interest due, deposit the balance of such proceeds, if any, in the State Treasury, which shall be allocated to the funds to which the tax levied by this Chapter is apportioned.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.21. Seizure Not Defense

The seizure, forfeiture, and sale of motor fuel and any other property named hereinabove under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or justification to the person owning or having control or possession of such property from criminal prosecution for any act or omission made an offense hereunder, or operate to exempt or relieve said person from liability to the State to pay penalties provided by this law, with or without suit therefor.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.22. Waiver

(1) Authority is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall pay into the State Treasury through

the Comptroller a penalty equal to twice the amount of the tax due on the motor fuel plus all other costs in connection with such seizure. A record of all such settlements and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

(2) Provided further, that if the Comptroller finds from examination of records or from other investigation that motor fuel has been sold, delivered, or used for any taxable purpose without taxes levied by this Chapter having been paid to the State of Texas, or accounted for by a licensed distributor, he shall have the power to require the person making such taxable sale, delivery or use of such motor fuel to pay into the State Treasury through the Comptroller the taxes due and a penalty equal to the amount of such taxes due. If any person who has made any such taxable sale or taxable use is unable to furnish sufficient evidence to the Comptroller that said taxes have been paid, or accounted for by a licensed distributor, the prima facie presumption shall arise that such motor fuel was sold, delivered, or used without said taxes having been paid.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.23. Rules and Regulations

(1) It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, costs and interest due or that may become due under the provisions of this Chapter, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Chapter or the Constitutions of this State or the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues levied hereunder.

(2) Upon final adoption of any rule or regulation, the Comptroller shall file a copy thereof with the Secretary of State, State of Texas, and the same shall have the force and effect of law as of the date of the filing unless a subsequent date is specified therein. Any person who violates any valid rule and regulation which has been duly filed with said Secretary of State, or violates any provision thereof, shall be subject to the penalties prescribed in Articles 9.18 and 9.26 of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1804, ch. 689, § 8, eff. Sept. 1, 1967.]

#### Art. 9.24. Comptroller May Act

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Chapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any book, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, said Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the District Court having jurisdiction of the witness; said Court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said Court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Chapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of funds appropriated for court costs to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 9.25. Enforcement Fund, Allocation of Revenue**

Before any diversion or allocation of the motor fuel tax collected under the provisions of this Chapter is made, one per cent (1%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of said proceeds of one per cent (1%) of the motor fuel tax paid monthly as may be needed in such administration and enforcement be and is hereby appropriated for

said purpose. Any unexpended portion of said fund so specified shall, at the end of each fiscal year, revert (1) to the Highway Motor Fuel Tax Fund, and (2) to the funds prescribed in Section (6a) of Article 9.13, as provided in this Chapter, in proportion to the amounts originally derived from such respective sources. The same shall then be allocated as provided in Article 9.13 of this Chapter and Section (6a) thereof, and in this Article 9.25, in the proportions above prescribed.

Each month the Comptroller of Public Accounts, after making all deductions for exempt refund purposes and for the funds derived from "unclaimed refunds" as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, shall allocate and deposit the net remainder of the taxes collected under the provisions of this Chapter, as follows: one-fourth ( $\frac{1}{4}$ ) of such tax shall go to, and be placed to the credit of, the Available Free School Fund; one-half ( $\frac{1}{2}$ ) of such tax shall go to and be placed to the credit of the State Highway Fund for the construction and maintenance of the State Road System under existing laws; and from the remaining one-fourth ( $\frac{1}{4}$ ) of such tax the Comptroller shall: (1) place to the credit of the County and Road District Highway Fund an amount determined by the Board of County and District Road Indebtedness and certified by the Board to the Comptroller of Public Accounts prior to August 31st of each year, for the fiscal year beginning September 1st each year, to be required in addition to any and all funds already on hand, for the payment by the Board of the principal, interest and sinking fund requirements for each year, on all bonds, warrants or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this state, which mature on or after January 1, 1933, insofar as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated state highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways and declared by the Board of County and District Road Indebtedness prior to January 2, 1945, to be eligible to participate in the distribution of the moneys in the County and Road District Highway Fund under the provisions of existing laws; (2) for the fiscal year beginning September 1, 1951, and each fiscal year thereafter, the Comptroller shall place to the credit of the fund known as the County and Road District Highway Fund the sum of Seven Million, Three Hundred Thousand Dollars (\$7,300,000.00), said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be allocated by the Board of County and District Road Indebtedness to all of the counties of Texas not later than September 15th of each year, through the Lateral Road Account, as provided under Subsection (h) of Section 6 of Chapter 324 of the General and Special Laws of

the 48th Legislature, Regular Session, 1943, as amended by Section 1 of Chapter 319, Acts of the 50th Legislature, 1947;<sup>1</sup> and (3) the Comptroller shall place to the credit of the State Highway Fund the remainder of such one-fourth (¼) of such tax, said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be used by the State Highway Department for the construction and improvement of Farm-to-Market Roads having the same general characteristics as the roads eligible for construction under Subsection (4-b) of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature, as amended.<sup>2</sup> During any fiscal year, under the terms of Subsection (4-b) of Section 2 of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature, as amended, in which there shall be a valid, effective appropriation of Fifteen Million Dollars (\$15,000,000.00) in the Farm-to-Market Road Fund to the State Highway Department for the purpose of constructing Farm-to-Market Roads, the Highway Department may use up to one-half (½) the above remainder for the maintenance of Farm-to-Market Roads.

All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 817, ch. 371, § 5; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. V, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 2, ch. 2, § 1, eff. May 3, 1962; Acts 1971, 62nd Leg., p. 1202, ch. 292, art. 5, § 2, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 1209, ch. 293, § 2, eff. July 1, 1971.]

<sup>1</sup> Civil Statutes, art. 6674q-7, subs. (h).  
<sup>2</sup> Civil Statutes, art. 7083a, subs. (4-b).

#### Art. 9.26. Misdemeanor Penalties

If any person

(a) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives, to inspect, examine and audit any books and records required to be kept by a distributor, refund dealer, or dealer, or

(b) shall refuse to permit said persons to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered or used, or

(c) shall refuse to permit said persons to measure or gauge the contents of all storage tanks, pumps or containers on said premises, or take samples therefrom, or

(d) shall conceal any motor fuel for the purpose of violating any provision of this Chapter, or

(e) shall transport motor fuel in a motor vehicle with pipe or tube connection from the cargo tank or container to the carburetor of said motor vehicle, or

(f) shall sell or distribute motor fuel from a fuel tank or auxiliary fuel tank with a direct or indirect connection to the carburetor of a motor vehicle, or

(g) if any dealer shall fail or refuse to keep in Texas for a period of time required by law, any books or records required to be kept by said person, or

(h) if any dealer, or the agent or employee of any dealer, shall knowingly make any false entry or fail to make entry in the books and records required to be kept by a dealer, or

(i) if any refund dealer shall refuse to surrender his refund dealer's license to the Comptroller upon suspension or cancellation of said license, or

(j) shall refuse to surrender to the Comptroller all unissued invoices of exemption upon the suspension or cancellation of said license, or if any person

(k) shall fail or refuse to comply with any provision of this Chapter, or shall violate the same, or

(l) shall fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller, or shall violate the same, said person or persons shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 9.27. Felony Penalties

(a) Whoever shall knowingly transport in any manner any motor fuel, casinghead gasoline, drip gasoline, natural gasoline, or absorption gasoline, under a false manifest, or

(b) whoever shall knowingly transport any of the foregoing named commodities in any quantity, for which a manifest is required to be carried, without then and there possessing or exhibiting upon demand by an authorized officer, a manifest, containing all the information required to be shown thereon, or

(c) while transporting any of the foregoing named commodities, shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized hereunder to stop said motor vehicle, or

(d) shall refuse to surrender his motor vehicle and cargo for impoundment when ordered to do so by a person authorized hereunder to impound said motor vehicle and cargo, or

(e) whoever shall make a first sale, distribution, or use of motor fuel, upon which a tax is required to be paid by law, without then and there holding a valid distributor's permit issued by the Comptroller, or

(f) whoever as a distributor shall fail or refuse to make and deliver to the Comptroller a report containing the information required by law to be made and delivered to said Comptroller, or

(g) whoever shall knowingly make and deliver to the Comptroller any false or incomplete report required by law to be made and delivered to the Comptroller by a distributor, or

(h) whoever as a distributor shall fail or refuse to keep in Texas for the period of time required by law any books and records required to be kept by a distributor, or

(i) whoever shall knowingly make any false entry or shall wilfully fail to make entry in any books and records required to be kept by a distributor, or

(j) whoever shall wilfully forge or falsify any invoice of exemption prescribed by law, or

(k) whoever shall wilfully and knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, shall be punished by confinement in the State Penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

In addition to the foregoing penalties, it is herein provided that a felony conviction for any of the above named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a distributor of motor fuel, or as a refund dealer, for a period of two (2) years from the date of such conviction.

Provided, that if any penalties prescribed elsewhere in this Chapter shall overlap as to offenses which are also punishable under Article 9.27 of this Chapter, then the penalties prescribed in the said Article 9.27 shall apply and control over all such penalties. Venue of prosecution under Article 9.27 shall be in Travis County, Texas, or in the county in which the offense occurred.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

## CHAPTER 10. SPECIAL FUELS TAX LAW

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### SUBCHAPTER A. DIESEL FUEL TAX LAW

#### Art. 10.01. Short Title

This Subchapter and any amendments thereto, shall be known and may be cited as the "Diesel Fuel Tax Law."

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

Sections 2 to 4 of Acts 1969, 61st Leg., p. 1407, ch. 427, provided:  
 "Sec. 2. Savings Clause. All taxes, penalties and interest incurred, and all liens created and bonds executed to secure their payment under any laws repealed or amended by this Act prior to its effective date, are hereby declared to be legal and valid obligations to this State; and any offense committed or any fines or penalties incurred under any laws repealed or amended by this Act prior to the effective date of this Act, shall not be affected by the repeal or amendment of any such laws, but the punishment of such offense and recovery of such fines and penalties shall take place as if the laws repealed or amended had remained in force.

"Sec. 3. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. Repealer. All laws or parts of laws in conflict herewith are, insofar as such confliction exists, hereby repealed and this Act shall prevail over any conflicting provision of law."

#### Art. 10.02. Definitions

The following words and phrases as used in this Subchapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Diesel fuel" means diesel engine fuel, kerosene, and all other liquids suitable for the generation of power for the propulsion of motor vehicles except "liquefied gas" as defined below and "motor fuel" as defined in the Motor Fuel Tax Law by Chapter 9, Article 9.01 of this Title.

(2) "Liquefied gas" means all combustible gases which exist in the gaseous state at sixty (60) degrees Fahrenheit and at a pressure of

fourteen and seven-tenths (14.7) pounds per square inch absolute.

(3) "Bulk." Except for deliveries into fuel supply tanks of motor vehicles, the term "bulk" means any quantity of diesel fuel in excess of five (5) gallons.

(4) "Motor vehicle" means every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highway. Tractors, combines, and other vehicles not required to be so licensed shall be deemed to be motor vehicles to the extent they are operated upon the public highway with diesel fuel on which the tax is required to be paid.

(5) "Public highway" means every way or place open to the use of the public as a matter of right for vehicular travel, including toll roads, notwithstanding that the same may be temporarily closed or travel thereon restricted for any purpose.

(6) "Supplier" means any person (a) who sells or delivers diesel fuel in bulk quantities to dealers, users or other suppliers, or (b) who is engaged in the business of selling or delivering diesel fuel in bulk quantities to consumers for non-highway use.

(7) "Dealer" means any person who, as the operator of a service station or otherwise, delivers diesel fuel into the fuel supply tanks of motor vehicles owned or operated by others.

(7a) "Airport Fixed Base Operator" means any person who purchases diesel fuel in bulk quantities for resale and delivery into fuel supply tanks of aircraft or into any equipment of said person which is not licensed or required to be licensed as a motor vehicle, and who does not use, sell or deliver any diesel fuel on which a tax is required to be collected or paid to this State by this Subchapter.

(8) "User" means any person who delivers, or causes to be delivered, diesel fuel into the fuel supply tanks of motor vehicles owned or operated by him. "User" also means any person who as an import-user brings diesel fuel into this State in the fuel supply tanks of motor vehicles owned or operated by him for use on the public highway.

(9) "Lessor" means any person (a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and (b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business.

(10) "Person" means natural persons, partnerships, firms, associations, corporations (public, private or municipal), trustees, and receivers.

(11) "Service Station" means a place of business regularly engaging in the sale and delivery

of diesel fuel into motor vehicles for their propulsion.

(12) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(13) "Distribution" means and includes any transaction, other than a sale, in which ownership or title to diesel fuel passes from one person to another.

(14) "First sale" shall mean, except as otherwise provided herein, the first sale or distribution in this State of diesel fuel, produced, refined, compounded, imported into, or otherwise acquired in said State; provided that when diesel fuel has been purchased tax free under the terms of this Subchapter, the first resale or distribution of said diesel fuel for any purpose other than a tax free sale duly authorized as such by Article 10.03(3) of this Subchapter shall mean and constitute a "first sale."

(15) "Chapter" as used in this Subchapter means Subchapter A of Chapter 10, Title 122A, Taxation—General, Revised Civil Statutes of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 1, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2343, ch. 710, § 1, eff. Aug. 30, 1971.]

#### Art. 10.03. Levy of Tax

(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of diesel fuel in this State an excise tax of Six and Five-Tenths cents (6.5¢) per gallon, or fractional part thereof so sold, distributed or used in this State. Upon each subsequent sale or distribution of diesel fuel for the propulsion of motor vehicles upon the public highways, on which the tax has been collected, the said tax shall be added to the selling price so that such tax is paid ultimately by the person using or consuming said diesel fuel for the propulsion of motor vehicles upon the public highways of this State.

(2) Provided, however, that in lieu of the tax rate specified and levied hereinabove an excise tax shall be and is hereby levied and imposed at six cents (6¢) per gallon of diesel fuel used for the propulsion of buses owned by a transit company

(a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers;

(b) which holds a franchise from such city or town;

(c) whose rates are regulated by such city or town; and

(d) which pays to such city or town a tax on its gross receipts, or which is a municipally owned and/or operated transit company.

(3) Every supplier shall collect and remit the tax, except as hereinafter provided to the contrary, upon

each gallon of diesel fuel sold or distributed by him to dealers, users and unlicensed suppliers, and upon each gallon of diesel fuel delivered into the fuel supply tanks of motor vehicles not operated by him, and shall pay the tax upon each gallon of diesel fuel delivered into the fuel supply tanks of motor vehicles owned or operated by him. Upon each sale or distribution of diesel fuel to a dealer for resale and delivery into motor vehicles, the tax shall be collected and remitted to this State on the gross or volumetric gallons of diesel fuel delivered to said dealer as shown by the Comptroller's measurement certificate issued for the vehicle tank making such delivery, or as shown by any other measuring device approved by the Comptroller for measuring bulk deliveries of diesel fuel to the storage facilities of dealers or service stations. It is further provided that when diesel fuel is delivered into the storage facilities of dealers or service stations by consignment or otherwise, the tax on the first sale or distribution of said diesel fuel shall be computed and paid to this State by the supplier upon the gross gallons delivered to such storage facilities as shown by the Comptroller's measurement certificate or other measuring device described above.

It is expressly provided, however, that the sale or distribution of diesel fuel may be made without collecting the tax otherwise imposed,

(a) when such sales or distributions are made by a licensed supplier to other suppliers holding valid permits, or to bonded users who have secured from the Comptroller and then and there hold valid permits authorizing them to purchase tax free diesel fuel which is predominantly for use off the public highways of this State, or

(b) when deliveries are made by a licensed supplier into a storage facility of a service station or of an airport fixed base operator from which diesel fuel or jet fuels will be resold and delivered to purchasers for exclusive non-highway use and not otherwise, and providing that the storage facility of each such service station is maintained separate and apart from facilities servicing fuel supply tanks of motor vehicles and is prominently labeled "NOT FOR HIGHWAY USE" in a manner to be prescribed by the Comptroller, and in plain view of the public to indicate that non-tax paid products are contained therein, or

(c) when deliveries are made into fuel supply tanks of railway engines, aircraft, boats, or vehicle refrigeration units powered by separate motors from separate fuel tanks; provided that invoices shall be issued showing the vehicle unit number, highway license number and other information required by Article 10.12 of this Subchapter, or

(d) when deliveries of kerosene having a flash-point not lower than 115 degrees Fahrenheit are made by a licensed supplier into a storage facility maintained and prominently la-

beled as kerosene by a store or mercantile establishment, or a gasoline retail station which does not handle other diesel fuel, for the storage of said kerosene for resale at retail to purchasers for illuminating, heating, cooking and similar non-highway consumption and not otherwise, or

(e) when the purchaser furnishes the seller a signed statement that none of the diesel fuel purchased in this State will be delivered by him or permitted by him to be delivered into fuel supply tanks of motor vehicles.

Except as otherwise prescribed by rule and regulation of the Comptroller, such statement when furnished to a licensed supplier shall remain in effect as long as said licensed supplier continues to sell and distribute diesel fuel to said purchaser, unless the statement is revoked in writing by the purchaser or supplier, or unless notification of a change in the status of the purchaser has been furnished the supplier by the Comptroller.

A taxable use of any part of the diesel fuel purchased pursuant to the above statement shall, in addition to the penal provisions otherwise provided by law, forfeit the right of said person to purchase diesel fuel tax free for a period of one (1) year from the date of the offense. Such person, may, however, file claim for refund of the tax paid on any diesel fuel used for non-highway purposes under the refund provisions of Article 10.14 of this Subchapter.

(4) Every dealer shall collect the tax, at the rate imposed, on each gallon of diesel fuel delivered by him into the fuel supply tanks of motor vehicles and shall report and pay to this State any tax so collected, which has not been paid to a licensed supplier.

(5) Every user shall report and pay to this State the tax at the rate imposed, on each gallon of diesel fuel delivered by him into the fuel supply tanks of motor vehicles, unless said tax has been paid to a licensed supplier. Every user shall also report and pay the tax, at the rate imposed, on each gallon of diesel fuel imported into this State in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of such motor vehicles upon the public highways of this State. No permits shall be required and no tax shall be paid on diesel fuel imported in the fuel supply tanks of a motor vehicle when the fuel supply tanks, and any additional containers, have an aggregate capacity of not more than thirty (30) gallons, and if said motor vehicle is not operated by said user for hire, or compensation, or for commercial purposes.

(6) The tax on one and one-half percent (1½%) of the taxable gallons of diesel fuel sold or distributed in this State shall be allocated to the persons selling, distributing or handling diesel fuel in this State which allocation or allowance shall be deducted by the supplier in the payment to the State of Texas of the taxes herein levied and shall be apportioned among all persons selling, distributing and handling diesel fuel in this State as follows:

I. One percent (1%) to the supplier making the first taxable sale or delivery of such diesel

fuel to dealers and users and paying the tax levied hereunder to the State of Texas for the expense of collecting, accounting for, reporting and remitting the taxes collected and keeping records.

II. One-half of one percent ( $\frac{1}{2}$  of 1%) of the taxable gallons to dealers, service station operators or consignors to cover evaporation and handling losses sustained by such dealers, service station operators or consignors from the time the diesel fuel is delivered to their storage facilities until it is sold and delivered into fuel supply tanks of motor vehicles.

Any user who holds a valid bonded user's permit to report and pay taxes directly to this State on diesel fuel used in the propulsion of motor vehicles upon the public highways of this State shall be entitled to deduct one-half of one percent ( $\frac{1}{2}$  of 1%) of the taxable gallons upon payment of the taxes to this State by him.

Any person who performs more than one (1) of the functions or activities referred to above (supplier or dealer), shall be entitled to the apportionment or allowance for each such function or activity, subject to the limitations prescribed for each such function or activity, and provided that the aggregate allowance shall never exceed one and one-half percent ( $1\frac{1}{2}\%$ ).

(7) No city, town, county, or other political subdivision of this State shall levy or collect any excise tax on the sale or use of diesel fuel.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, §§ 2, 3, eff. May 17, 1965; Acts 1967, 60th Leg., p. 1058, ch. 463, § 1, emerg. eff. June 12, 1967; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1204, ch. 292, art. 5a, § 1, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 1212, ch. 293, § 5, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 2343, ch. 710, § 2, eff. Aug. 30, 1971.]

Section 1 of Acts 1971, 62nd Leg., p. 2343, ch. 710, added section (7a) to article 10.02; section 2 thereof amended section (3) of this article; and sections 3 to 5 provided:

"Sec. 3. Saving Clause. All taxes, penalties and interest incurred and all liens created and bonds executed to secure their payment under any laws repealed or amended by this Act prior to its effective date, are hereby declared to be legal and valid obligations to this State; and any offense committed or any fines or penalties incurred under any laws repealed or amended by this Act prior to its effective date, shall not be affected by the repeal or amendment of any such laws but the punishment of such offenses and recovery of such fines, penalties and interest shall take place as if the laws repealed or amended had remained in force.

"Sec. 4. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable.

"Sec. 5. Repealer. All laws or parts of laws in conflict herewith are, so far as such conflict exists, hereby repealed and this Act shall prevail over any conflicting provisions of law."

#### Art. 10.04. Dual Carburetion—Presumption of Use

Any person who operates a motor vehicle that is equipped to use diesel fuel and motor fuel or liquefied gas interchangeably in the propulsion of said motor vehicle shall be prima facie presumed to have used taxable diesel fuel exclusively in the operation of said motor vehicle, unless proof of the amount of motor fuel or liquefied gas used is maintained.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.05. Unlawful Operations of Motor Vehicles

(1) It is unlawful to transport diesel fuel in any cargo tank from which diesel fuel is sold or delivered which has a connection by pipe, tube, valve, or otherwise with the fuel injector or with the fuel supply tank feeding the fuel injector of the motor vehicle transporting said products.

(2) It is unlawful to operate with diesel fuel any motor vehicle licensed for operation upon the public highway on which a speedometer is not kept at all times in good operating condition to measure and register correctly the miles traveled by such motor vehicle; it is provided, however, that any device other than a speedometer which measures and registers correctly the miles traveled may be used on motor vehicles of motor carriers operating under the provisions of the Motor Carrier Act,<sup>1</sup> provided the mileage recorded on such device is inserted in lieu of the speedometer reading on each invoice covering diesel fuel delivered into the fuel supply tanks of such motor vehicles.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 4, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Civil Statutes, arts. 911a, 911b.

#### Art. 10.06. Unlawful Sales

Except in the case of tax free sales or distributions of diesel fuel authorized by subdivisions (b), (c), and (d) of Article 10.03(3) of this Subchapter, it is unlawful to make bulk sales of diesel fuel tax free to any person who (1) is not licensed as a supplier, or (2) is not licensed as a user of diesel fuel, or (3) does not furnish to the seller the signed statement prescribed in subdivision (e) of said Article 10.03(3).

As a means of determining the validity of a supplier's or user's permit to purchase diesel fuel tax free, the selling supplier, or an employee or representative thereof, shall examine the permit or photocopy thereof, showing the name of the permit holder, the kind of permit, the permit number, and the period it covers. Provided, however, the Comptroller shall, on or before the twentieth (20th) day of December of each calendar year, prepare, and mail or distribute to all bonded suppliers a printed alphabetical list of bonded suppliers and users who are qualified to purchase diesel fuel tax free during the ensuing calendar year and a supplemental list of additions and deletions shall be delivered to said suppliers each month thereafter.

The current and effective permits so examined, or the list thereof furnished by the Comptroller, shall serve as evidence of the validity of such permits unless and until the Comptroller notifies such selling supplier of a change in the status of any such permit holder.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 5, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 65, ch. 43, § 1, eff. Aug. 27, 1973.]

**Art. 10.07. Tax Liability on Leased Motor Vehicles**

(1) Except as otherwise provided in this Article, every user or import-user shall be liable for the tax on diesel fuel imported into this State in fuel supply tanks of motor vehicles leased to him and used on the Texas highways to the same extent and in the same manner as diesel fuel imported in his own motor vehicles and used on the public highways of Texas.

(2) Provided, however, a lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the user or import-user when he supplies or pays for the diesel fuel consumed in such vehicles, and such lessor may be issued a permit as an import-user when application and bond have been properly filed with and approved by the Comptroller for such permit.

Any lessee may exclude motor vehicles of which he is lessee from his reports and liabilities pursuant to this Subchapter, but only if the motor vehicles in question have been leased from a lessor holding a valid permit as a bonded import-user for the calendar year.

(3) Every such lessor shall file with his application for a bonded import-user's permit one copy of the form lease or service contract he enters into with the various lessees of his motor vehicles. When the import-user permit has been secured, such lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy of such permit to be carried in the cab compartment of said motor vehicle, and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned, and the name of the lessee. Such lessor shall be responsible for the proper use of such photocopy of said permit issued and its return to him with the motor vehicle to which it is assigned.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1061, ch. 465, § 1, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.08. Tax Computation on Mileage Basis**

(1) In the event the tax on diesel fuel imported into this State in the fuel supply tanks of motor vehicles for taxable use on the Texas public highways can be more accurately determined on a mileage basis the Comptroller is authorized to approve and adopt such basis. When an import-user imports diesel fuel into or exports diesel fuel from the State of Texas in the fuel supply tanks of motor vehicles, the amount of diesel fuel consumed in such vehicles on the Texas public highways shall be deemed to be such proportion of the total amount of such diesel fuel consumed in his entire operations within and without this State as the total number of miles traveled on the public highways within this State bears to the total number of miles traveled within and without the State. The Comptroller may also adopt such mileage basis for determining the tax-

ble use of diesel fuel used in motor vehicles which travel regularly over prescribed courses on and off the public highways within the State of Texas.

(2) In the absence of records showing the number of miles actually operated per gallon of diesel fuel consumed, it shall be prima facie presumed that not less than one (1) gallon of diesel fuel was consumed for every four (4) miles traveled.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1062, ch. 465, § 2, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.09. Application for Permits**

(1) Every person defined herein as a supplier or import-user, or as a user whose purchases of diesel fuel are predominantly for nonhighway consumption, shall secure from the Comptroller the kind and class of permit required herein to act in such capacities or to perform such functions. Application shall be filed with the Comptroller for any such permit on a form prescribed by the Comptroller, showing the kind and class of permit desired, and such information as the Comptroller may require.

Provided, however, the Comptroller may, if in his opinion any supplier, import-user, or user holding a permit has fully performed all the conditions and requirements imposed upon him by this Subchapter, including the payment to this State of all taxes collected and required to be collected, and all taxes due and accruing upon the use of diesel fuel by said supplier, import-user, or user, waive the requirement for filing the application for permit or renewal thereof, and automatically issue to said supplier, import-user, or user, the kind and class of permit previously held by him to be effective for the ensuing calendar year.

Provided, that any supplier, or any user whose purchases of diesel fuel are predominantly for nonhighway consumption, and which supplier or user pays the tax imposed herein to a bonded supplier holding a valid permit on all diesel fuel purchased or acquired by him may perform such functions without securing a permit otherwise required, and may file claim for and secure a refund of taxes paid on any part of such diesel fuel used, or resold for use, entirely off the public highway.

(2) Any carrier operating motor vehicles into this State for commercial purposes may make application for a trip permit which shall be good for a period of not more than twenty (20) consecutive days beginning and ending on the dates specified on the face of the permit issued. A fee for such trip permits shall be required which shall be in an amount equivalent to the tax payable on the quantity of diesel fuel that could be imported in the fuel supply tanks of such motor vehicles, but never less than Five Dollars (\$5). Such fees shall be in lieu of the use tax otherwise assessable against the permit holder for importing and using diesel fuel in motor vehicles on the public highways of this State, and no reports of mileage shall be required with respect to such vehicles. All

such fees collected by the Comptroller shall be allocated to the same funds to which the diesel fuel taxes collected hereunder are allocated.

The above trip-permits may be issued in lieu of annual import-user permits if the applicant therefor does not operate motor vehicles into or from the State of Texas more than three (3) times during any calendar year.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1062, ch. 465, § 3, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 65, ch. 43, § 2, eff. Aug. 27, 1973.]

#### Art. 10.10. Bonds

(1) Every person who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the sale, distribution or use of diesel fuel shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than two (2) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000) if filed by a supplier nor less than Five Hundred Dollars (\$500) if filed by a user.

Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from the date it is made effective, until or unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Subchapter, or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person.

Every such bond shall be continuous in form and shall be automatically extended from calendar year to calendar year and shall constitute a new and separate obligation, in the amount of the penal sum named therein, for each calendar year while such bond is in force; and provided further said bond shall remain in effect until the surety on said bond is released or discharged as herein provided in this Article.

(2) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one month if, in his opinion, an existing bond has become insufficient. If any supplier or user licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the

Comptroller his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his Office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of such person.

(3) Any person who has filed with the Comptroller a bond as a motor fuel distributor under the terms and conditions provided in the Motor Fuel Tax Law, Chapter 9, Article 9.07 of this Title, may extend the terms and conditions of said distributor's bond, by rider or bond form approved by the Comptroller, to include coverage of all liabilities and conditions imposed by this Subchapter upon the supplier or to the user to whom said extension is made applicable. The amount of any new bond that may be required of a supplier or user shall not exceed the maximum amount provided by said motor fuel tax law for a motor fuel distributor's permit.

(4) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of the University of Texas may be legally invested.

Such cash or securities shall be released within sixty (60) days after cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller.

The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover diesel fuel taxes, costs, penalties, and interest found to be due this State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed.

[Acts 1959, 56th Leg., 3rd C.S., p. 197, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 66, ch. 43, § 3, eff. Aug. 27, 1973.]

Sections 4 to 6 of the 1973 Act provided:

"Sec. 4. Saving Clause. It is expressly provided that all existing bonds which have been issued for the calendar year, 1973, and are now in effect shall remain in full force and effect for the balance of the calendar year as if the law had not been amended, but all new bonds executed or issued after the effective date of this Act shall be subject to the provisions of this Act. It is further provided that all taxes, penalties, and interest incurred and all liens created and bonds executed to secure their payment under any laws repealed or amended by this Act prior to its effective date are hereby declared to be legal and valid obligations to this state; and any offense committed or any fines or penalties incurred under any laws repealed or amended by this Act prior to its effective date, shall not be affected by the repeal or amendment of any such laws but the punishment of such offenses and recovery of such fines, penalties, and interest shall take place as if the laws repealed or amended had remained in force.

"Sec. 5. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 6. Repealer. All laws or part of laws in conflict herewith are, insofar as such conflict exists, hereby repealed and this Act shall prevail over any conflicting provision of law."

### Art. 10.11. Permits

(1) Upon approval of an application and approval of the bond required, the Comptroller shall issue to the applicant a permit authorizing him to engage in the kind of business or other operations or to perform the functions set out in and authorized by the class of permit so issued. The permits shall be issued for each calendar year, or any unexpired part of a year, and shall be effective from the date of issue to the end of such calendar year, unless revoked or suspended for cause, as hereinafter provided. Such permits shall be of the kinds and classifications as set out hereinbelow:

#### A. BONDED SUPPLIER PERMITS.

Authorizing persons to engage in business as suppliers of diesel fuel to dealers, users, and to other authorized purchasers of diesel fuel.

#### B. BONDED USER PERMITS.

Authorizing users whose purchases of diesel fuel are predominantly for non-highway use by them to purchase diesel fuel tax free from their suppliers and to report and pay taxes to this State on the part of such diesel fuel which is delivered into the fuel supply tanks of motor vehicles by them.

#### C. BONDED IMPORT USER PERMITS.

Authorizing users to import or bring diesel fuel into this State in the fuel supply tanks of motor vehicles owned or operated by them, and to report and pay the tax due thereon to this State, and to claim credit or a refund of the tax paid on diesel fuel which is thereafter used in other States.

Nothing herein shall be construed as permitting any tax free sale or delivery of diesel fuel to an import-user, or of permitting any sale and delivery of diesel fuel directly into the fuel supply tanks of a motor vehicle without collecting the tax thereon from the purchaser of such diesel fuel.

The Comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued.

A supplier may operate under his supplier's permit as a user without securing a separate permit but he shall be subject to all other conditions, requirements,

and liabilities imposed by Subchapter A upon a user. A dealer may use diesel fuel in motor vehicles owned or operated by him without securing a permit as a user, subject to all other conditions, requirements, and liabilities imposed herein upon a user.

All permits shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. Permit holders shall reproduce the permit by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which diesel fuel is sold, distributed or used and in each motor vehicle used by the permit holder to transport diesel fuel purchased by him for resale, distribution or use. Persons holding import-user permits shall reproduce the permit and carry a photocopy thereof with each motor vehicle being operated to or from the State of Texas.

(2) The Comptroller or any authorized representative of the Comptroller, is hereby authorized to cancel or to suspend any permit issued under the terms of this Subchapter or to refuse the issuance, extension, or reinstatement of any permit to any person who has violated, or has failed to comply with, any rule and regulation of the Comptroller or any provision of this Chapter. Before any such permit may be cancelled or suspended, or the issuance, or extension, or reinstatement of any such permit may be refused, the Comptroller shall give the owner of such permit, or applicant therefor, not less than five (5) days notice of a hearing at the Office of the Comptroller in Austin, Travis County, Texas, or at any district office maintained by the Comptroller's Department granting said owner or applicant an opportunity to show cause before the Comptroller, or his authorized representative, why such action should not be taken. Such notice shall be in writing and may be mailed by certified or registered mail to said owner or applicant at his last known address or may be delivered by a representative of the Comptroller to the owner or applicant, and no other notice shall be required. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit is cancelled, as above provided, all taxes which have been collected or required to be collected upon the sale, distribution or use of diesel fuel shall ipso facto become delinquent, and the permit holder shall forthwith file a report for any period not covered by preceding reports filed by him to the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected or required to be collected and which have accrued from the sale, distribution or use of diesel fuel up to and including the date of cancellation. A new permit shall not be issued to any person who is delinquent in the payment of taxes, penalties or interest.

After being given notice of any such order of cancellation, it shall be unlawful for any person to

continue to operate his business under a cancelled permit.

An appeal from any order of the Comptroller, or his authorized representative, cancelling, suspending or refusing the issuance, extension or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permit holder or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz:

(1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision or ruling of the Comptroller, or his authorized representative;

(2) such proceedings shall have precedence over all other causes of a different nature;

(3) trial of all such cases shall commence within ten (10) days from the filing thereof;

(4) the order, decision, or ruling of the Comptroller or his authorized representative, may be suspended or modified by the Court pending a trial on the merits:

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 6, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.12. Records Required

(1) Every supplier, dealer, or user, whether or not required by the provisions of this Subchapter to secure a permit to sell, deliver, or use diesel fuel shall keep for a period of two (2) years open to inspection at all times by the Comptroller or Attorney General, or their authorized representatives, a complete record of all diesel fuel purchased or received and all of such products sold, distributed, or used by them showing the date of each receipt, the name and address of the person from whom purchased or received, the number of gallons received at each place of business or place of storage in Texas, and showing the date of each sale or distribution, the number of gallons sold, or distributed, for taxable purposes, and the number of gallons sold or distributed for any purpose not subject to the tax imposed herein, and if sold in bulk quantities the name and address of the purchaser, and showing inventories of diesel fuel on hand at each place of business at the end of each month.

(2) Each bulk sale and delivery of diesel fuel shall be covered by an invoice with the name and address of the supplier or dealer and a serial number printed thereon, showing the complete information set out hereinabove for each such sale, one counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purposes above provided. Every delivery of diesel fuel into the fuel supply tank of a motor vehicle shall be recorded upon a serially numbered invoice issued in not less than duplicate on which shall be printed, or stamped with a rubber stamp, the name and address of the supplier, dealer, or user making such delivery and on which shall be

shown the name and address or credit card identification of the purchaser, the date of delivery, the number of gallons of diesel fuel so delivered, the total mileage recorded on the speedometer of the motor vehicle into which delivered, and the State highway license or unit number of said motor vehicle. The invoice shall be signed by the driver.

The invoice required above must be demanded by every person purchasing and receiving a delivery of diesel fuel into the fuel supply tank of a motor vehicle in Texas at the time of such delivery and such person shall carry the invoice with the vehicle until the fuel covered by same is consumed. The invoice shall show the tax rate or amount of tax paid or accounted for.

Every supplier, dealer or user making such sales or distribution of diesel fuel and every person so receiving and purchasing diesel fuel must each retain one copy of each such invoice as part of his permanent records for the time and purposes above provided.

(3) Every user shall keep, in addition to his record of deliveries into motor vehicles a complete record of the total gallons of diesel fuel used for other purposes during each month and the purposes for which said diesel fuel was used.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 7, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.13. Tax Payments—Reports

(1) Every supplier who is required herein to collect taxes on the sale or distribution of diesel fuel and every user who is required to pay taxes on the delivery of diesel fuel into the fuel supply tanks of motor vehicles or on the use of imported diesel fuel shall, on or before the 25th day of each calendar month, pay to the State of Texas at the Office of the Comptroller in Austin, Travis County, Texas, the amount of such taxes required to be collected and the amount required to be paid during the month next preceding, unless said taxes have been paid by a user to a licensed supplier as provided in this Subchapter. At the time of making such tax payments every supplier or user who is required to pay any taxes directly to this State, shall file with the Comptroller a report of diesel fuel handled, in the form and manner as hereinafter provided.

(2) Every supplier shall, on or before the 25th day of each calendar month, file with the Comptroller upon a form prescribed by the Comptroller an itemized report made subject to the penalties of Article 1.12, Chapter 1 of this Title, accounting for the diesel fuel handled during the preceding month which report shall show the quantities of diesel fuel purchased or received from sources within this State and the quantities received from sources outside of this State, the quantities sold or delivered to dealers and users upon which taxes were required to be collected, the quantities sold and delivered to dealers and users without collecting said taxes, the quanti-

ties sold and delivered into the fuel supply tanks of motor vehicles, the quantities delivered into the fuel supply tanks of motor vehicles owned or operated by such supplier and the quantities used by him for other purposes, the total quantities sold or delivered to persons other than dealers, users, or operators of motor vehicles, the quantities lost by fire or other accident, the quantities lost by shrinkage or evaporation, and the total quantities on hand at the beginning and at the end of the month covered by such report. The report shall include a schedule of the total quantities of diesel fuel sold or delivered to dealers and users without collecting taxes thereon, and the names and addresses of such dealers or users. The Comptroller may in his discretion require selective schedules from any supplier with respect to any purchases, sales or deliveries of diesel fuel. Every supplier shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(3) Every user who purchases or acquires diesel fuel tax-free for taxable use of any part of said products shall, on or before the 25th day of each calendar month, file with the Comptroller upon forms prescribed by the Comptroller an itemized report, made subject to the penalties of Article 1.12, Chapter 1 of this Title, accounting for the diesel fuel handled during the preceding month which report shall show the quantities of diesel fuel purchased or received and the suppliers from whom received, the quantities delivered into the fuel supply tanks of motor vehicles owned or operated by such user, the quantities used off the public highways of this State and the purposes for which used, the quantities lost by fire or other accident or disposed of in any other manner, and the total quantities on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such user with respect to any purchases, deliveries or uses of diesel fuel. Every such user shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(4) Every user who imports diesel fuel in the fuel supply tanks of motor vehicles operated by him on the public highways of Texas for hire or compensation or for commercial purposes shall, on or before the 25th day of each calendar month, file with the Comptroller on forms prescribed by the Comptroller an itemized report, made subject to the penalties of Article 1.12, Chapter 1 of this Title, accounting for all diesel fuel imported and all diesel fuel used in such motor vehicles during the preceding calendar month, which report shall show for each motor vehicle operated by said user into or from the State of Texas for such purposes, the total miles traveled in Texas and elsewhere, the total quantities of diesel fuel consumed by each motor vehicle in such travel and the average miles traveled per gallon of fuel

consumed, the total miles traveled in the State of Texas and the quantities of diesel fuel purchased in Texas and delivered into the fuel supply tanks of each such motor vehicle, and such other information pertinent to the use of diesel fuel in such motor vehicles and the taxes paid or accrued thereon, as the Comptroller may require. The Comptroller may in his discretion permit the filing of such reports on a fleet basis and may require schedules to be submitted as a part of such report with respect to any diesel fuel purchased or used in connection with such operations. Every such user shall attach legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered in the report.

(5) When it shall appear to the Comptroller from evidence submitted by an import-user that records of diesel fuel used by him for taxable purposes on the public highways of this State in motor vehicles operated in interstate travel cannot be secured from all drivers of such vehicles in time to file accurate reports and tax remittances within the time prescribed by law, the Comptroller may agree to accept monthly reports and tax remittances computed on a fixed mileage basis by which the miles traveled in Texas by said vehicles will be divided by a fixed mileage factor to determine the taxable gallons of diesel fuel used in such vehicles upon the public highways of this State. It is expressly provided, however, that whenever an audit made by the Comptroller from the records of the import-user shows that more diesel fuel was consumed on the Texas highways on a basis of the average miles traveled per gallon of fuel consumed than was reported for tax purposes, the import-user shall be liable for the tax on the additional gallons shown as used, and any penalties and interest due thereon.

(6) When it shall appear that a supplier or user, to whom the provisions of this Chapter shall apply, has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any diesel fuel during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such supplier or user for the current period, if any, with the total amount of taxes so erroneously paid, or said supplier or user may file claim for refund of the taxes erroneously paid. Such credit shall be allowed or the tax refund claim paid before any penalties and interest shall be applicable.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 8, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.14. Refunds

(1) Except as otherwise provided by Article 10.15 of this Subchapter, any dealer who shall have paid the tax at the rate imposed by this Subchapter upon any diesel fuel which has been used or sold for use by such dealer for any purpose other than propelling a motor vehicle upon the public highways of this

State, or which have been sold to the United States Government for the exclusive use of said government, and any user who shall have paid said tax at the rate imposed upon any diesel fuel which has been used by such user for any purpose other than propelling a motor vehicle upon said public highways, may file claim for a refund of the tax or taxes so paid, less one and one-half percent (1½%) allowed vendors for the expense of collecting and reporting such taxes to this State. Such claims shall be filed with the Comptroller on forms prescribed by the Comptroller and shall show the date of filing and the period covered in the claim, the number of gallons of diesel fuel sold or used for purposes subject to tax refund, and shall show such other facts and information as the Comptroller may by rule and regulation require. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as hereinafter provided, or such other information as the Comptroller may require, and shall be filed in the Office of the Comptroller within one (1) year from the first day of the calendar month in which the diesel fuel was invoiced or required to be invoiced for sale or use, and no claim shall be made by the claimant or approved by the Comptroller after the expiration of one (1) year from the first day of the calendar month in which said diesel fuels were invoiced or required to be invoiced for sale or use.

Every bonded import-user shall be entitled to a credit equivalent to the tax rate per gallon paid on all diesel fuel upon which the Texas diesel fuel tax has been paid and which has thereafter been consumed in motor vehicles outside of the State of Texas. When the amount of credit herein provided to which the import-user is entitled for any calendar month exceeds the amount of tax for which such import-user is liable for diesel fuel consumed in such vehicles during the same month, such excess shall under regulations of the Comptroller, be allowed as a credit against the tax for which such import-user would be otherwise liable for a period of one (1) year from the first day of the calendar month in which the diesel fuel was used; or upon claim filed with the Comptroller within one (1) year from the first day of any calendar month in which said diesel fuel was used, such excess may be refunded as hereinabove provided. Evidence of the mileage traveled and the gallonage consumed and the payment of the diesel fuel tax, on such form as may be required by or is satisfactory to the Comptroller, shall be furnished by such import-user claiming the credit or tax refund herein allowed.

(2) When diesel fuel is sold by a dealer or supplier, or is appropriated for use by a user for any purposes for which a refund of the tax paid on said products may be claimed as provided herein, such dealer, supplier or user shall, at the time of each sale or appropriation for use and not thereafter, make out a serially numbered invoice in not less than duplicate counterparts with the name and address of the dealer, supplier or user printed thereon which shall show

the date of the sale or appropriation for use, the quantities of diesel fuel sold or appropriated for use, the purposes for which used, as declared by the purchaser or user, and such other information as the Comptroller may require. The invoice shall be signed by the recipient of any such diesel fuel purchased from a dealer or supplier. One counterpart of each invoice shall be kept by the dealer, supplier or user for a period of two (2) years open to the inspection of the Comptroller or his authorized representatives, and the other counterpart shall be filed as a part of the claim for tax refund as above provided. The Comptroller may authorize the filing of other information in lieu of the invoice counterpart.

(3) In the event the quantity of diesel fuel consumed by power pumping units or other power-take-off equipment of any motor vehicle can be accurately measured while the vehicle is stationary by any metering or other measuring device designed to measure such fuel separately from fuel used to propel the motor vehicle, the Comptroller is hereby authorized to approve and adopt the use of such device as a basis for determining the quantity of diesel fuel consumed in such operations for tax credit or tax refund.

(4) If upon examination or investigation the Comptroller finds that the claim is just and that the taxes claimed have been paid by the claimant, he shall issue warrant to the claimant in the amount due but no greater amount shall be refunded than has been paid into the State Treasury on any such diesel fuel.

(5) All the moneys paid into the Treasury under the provisions of this Subchapter, except the filing fees provided herein, shall be set aside in the special fund known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on the sale of diesel fuel during the preceding month, upon which a refund may be due, and shall certify to the State Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant loses, or for any reason fails to receive warrant after it has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided in Article 4365, Revised Civil Statutes of Texas.

So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided herein. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one and one-half percent (1½%) deducted originally by the supplier upon the sale or delivery of the diesel fuel shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of the provisions of this Subchapter, and for the payment of expenses in furnishing the claim forms and other forms provided for herein, and the same is hereby appropriated for such purpose. All such filing fees shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1063, ch. 465, § 4, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 1507, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.15. Exceptions to Tax Refunds

(1) No tax refunds shall be paid to any person on diesel fuel used in any construction, maintenance or repair work on the public highways of this State when and if such work is paid for from any State funds to which diesel fuel tax collections are allocated or is paid jointly from any such State funds and Federal funds.

(2) The delivery of diesel fuel into the fuel supply tanks of any tractor, truck tractor, vehicle, or machine of any kind or description for use in hauling materials, supplies or products over the public highways to or from any highway construction, maintenance or repair work, shall constitute and be deemed to mean the delivery of diesel fuel into the fuel supply tanks of motor vehicles for taxable use.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.16. Prima Facie Presumptions

(1) Any supplier, dealer or user who shall fail to keep the records, issue the invoices or file the reports required by this Subchapter, shall be prima facie presumed to have sold, distributed or used for taxable purposes all diesel fuel shown by a duly verified audit by the Comptroller, or any authorized representative thereof, to have been sold or distributed to such supplier, dealer or user, and the Comptroller is hereby authorized to fix or establish the amount of taxes, penalties and interest due the State of Texas from such records of deliveries or from any records or information available to him and if the tax claim as developed from such procedure is not paid, such claim and any audit made by the Comptroller, or an authorized representative thereof, or any report filed by such supplier or user, shall be admissible in evidence in any suit or judicial proceedings filed by the Attorney General, and shall be prima facie evidence of the correctness of said claim or audit;

provided that prima facie presumption of the correctness of the claim may be overcome upon the trial by evidence adduced by said supplier, dealer or user.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, report, bond or other instrument referred to in this Subchapter, and that the same had been adopted, promulgated, or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, regulation, report, bond, or other instrument without further proof of such adoption, promulgation, execution or filing, and without further proof of its contents.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.17. Liens

All taxes, penalties, interest and costs due by any supplier, dealer or user under the provisions of this Subchapter and all taxes collected by a supplier or dealer and required to be paid to this State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all of the property of any supplier, dealer or user, devoted to or used in his business or other operations as a supplier, dealer or user, which property shall include all plants, storage tanks, warehouses, office buildings, pumps, and equipment, vehicle tanks, trucks, trailers, or other vehicles, stocks on hand of every kind and character whatsoever used or usable in such business or other operations including diesel fuel and the proceeds from the sale or delivery of diesel fuel and including cash on hand and in banks, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated, which is devoted to such use, and each tract of land on which such plants, storage tanks and other property is located, or which is used in carrying on such business or other operations.

This lien shall not be valid against any "mortgage" of a "motor vehicle" as those terms are defined in the Certificate of Title Act,<sup>1</sup> provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any supplier, dealer or user, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such supplier, dealer or user, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Civil Statutes, art. 6687—1.

#### Art. 10.18. Civil and Statutory Penalties

(1) If any person affected by this Subchapter shall fail or refuse to comply with any provision of this Subchapter or shall violate the same, or shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller or shall violate the same, he shall forfeit to the State of Texas as a penalty the sum of Twenty-five Dollars (\$25). Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to such penalty, if any supplier, dealer or user does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said supplier, dealer or user, within the time prescribed by law said supplier, dealer or user shall forfeit two percent (2%) of the amount due; and if said taxes are not remitted or paid within ten (10) days from the date the Comptroller gives such supplier, dealer or user notice in writing directed to his last known address that all taxes which appear to be due have not been paid, an additional eight percent (8%) shall be forfeited. All past due taxes and penalties shall draw interest at the rate of six percent (6%) per annum.

(2) The venue of any suit, injunction or other proceedings at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder, and the enforcement of the terms and provisions of this Subchapter, shall be in a court of competent jurisdiction of Travis County, Texas, or in any other court of competent jurisdiction having venue under existing venue Statutes.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 334, ch. 158, § 9, eff. May 17, 1965; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.19. Impounding Vehicles

In order to enforce the provisions of this Subchapter, the Comptroller or his authorized representatives, or any Highway Patrolman of the Department of Public Safety, any sheriff, constable and their deputies, or any other peace officer, is empowered to stop any motor vehicle which appears to be operating with diesel fuel for the purpose of examining the invoice required to be carried, and examining any permit or copy thereof that may be required to be carried, to take samples from the fuel supply tanks, and for such other investigations as could reasonably be made to determine whether the taxes have been paid or accounted for by a licensed user upon the diesel fuel being used to propel the motor vehicle upon the public highways of Texas. If after said examination or other investigation it is found the owner or operator of said motor vehicle has not paid said taxes, or does not possess a valid permit as a user to use such diesel fuel in motor vehicles operating on said public highways, such authorized officers shall impound the motor vehicle, and unless proof is produced within seventy-two (72) hours from the beginning of impoundment that the owner or operator has paid said taxes, and has paid all other taxes established by audit or investigation by the Comptroller, or his authorized representatives, to be due upon the use of diesel fuel for the propulsion of motor vehicles upon the public highways of Texas, or that said owner or operator holds a valid user's permit to use diesel fuel for such purposes, the motor vehicle shall be held until all taxes, penalties and interest found to be due this state and all costs of impoundment have been paid, or until said owner or operator has filed bond with the Comptroller payable to the State Treasurer in an amount equal to twice the amount of taxes, penalties, interest and costs found to be due, to guarantee the payment of such liabilities to the State of Texas.

If the taxes, penalties, interest and costs found to be due are not paid, the Comptroller shall certify the claim to the Attorney General who shall file proceedings to foreclose the State's tax lien upon such motor vehicle, or take such other action to recover the amount due the State as provided by law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.20. Subpoenas

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purposes contemplated by this Subchapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any

witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any books, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, the Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the district court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Subchapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of any funds appropriated to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the Office of the Comptroller.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.21. Rules and Regulations

(1) It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, interest and costs, due or that may become due under the provisions of this Subchapter, and to that end the Comptroller is hereby vested with all the power and authority conferred by this Subchapter. The Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Subchapter or the Constitution of this State or the United States, for the enforcement of the provisions of this Subchapter and the collection of all taxes, penalties, interest and costs levied hereunder.

(2) Upon final adoption of any rule and regulation, the Comptroller shall file a copy thereof with

the Secretary of State, State of Texas, and the same shall have the force and effect of law as of the date of such filing unless a subsequent date is specified therein. Any person who violates or fails to comply with any valid rule and regulation which has been duly promulgated by the Comptroller and filed with said Secretary of State, or violates or fails to comply with any provision thereof, shall be subject to the penalties prescribed by Articles 10.18 and 10.25 of this Subchapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1967, 60th Leg., p. 1063, ch. 465, § 5, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.22. Allocation of Funds

Before allocation of the funds collected hereunder is made, one percent (1%) of the gross amount of said fund shall be set aside in the State Treasury in a special fund for the use of the Comptroller in the administration and enforcement of the provisions of this Subchapter and so much of said amount as may be needed is hereby appropriated for said purpose. Any unexpended portion of such fund shall at the end of each fiscal year revert to the respective funds in the proper proportions to which the diesel fuel taxes are allocated.

Each month the Comptroller shall, after making deductions for refund purposes as provided in Article 10.14, of this Subchapter, and for the administration and enforcement of the provisions of this Subchapter allocate and deposit the remainder of the taxes collected under the provisions of this Subchapter, in the proportions as follows: One-fourth ( $\frac{1}{4}$ ) of such taxes shall go to and be placed to the credit of the Available Free School Fund and three-fourths ( $\frac{3}{4}$ ) of such taxes shall go to and be placed to the credit of the State Highway Fund.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.23. Penalty, Failure to Pay or Conversion of Taxes

(1) All taxes collected under the provisions of this Subchapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State of Texas at the time and in the manner provided in this Subchapter.

(2) If any supplier or dealer, or any director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or any person, shall willfully fail or refuse to pay over to the State of Texas any such tax fund collected by him under the provisions of this Subchapter on or before the date such payment is required to be paid under the provisions of this Subchapter, such supplier or dealer, or such director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or such person, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than

one (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any supplier or dealer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Subchapter by such supplier or dealer, or any director, officer, agent, employee, trustee, receiver of such supplier or dealer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Subchapter, such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(4) If the penalties prescribed elsewhere in this Subchapter overlap as to the offenses punishable under Article 10.23 of this Subchapter, then the penalties prescribed in Article 10.23 shall apply and control over all such penalties. Venue of a prosecution under Article 10.23 shall be in Travis County, Texas, or in the county where the offense occurred. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 425, § 1, eff. Sept. 1, 1969.]

#### Art. 10.24. Felony Penalties

If any supplier, or user, or any director, officer, agent, employee, or receiver of such supplier or user

(a) shall sell, distribute, deliver or use diesel fuel for any purpose for which a permit is required under the provisions of this Subchapter without a valid permit being then and there held by such supplier or user, or

(b) shall fail or refuse to make and deliver to the Comptroller within the time prescribed by law any report required to be made and delivered to the Comptroller by such supplier or user, or

(c) shall knowingly make and deliver to the Comptroller any report required by law to be made and delivered which is false or incomplete, or

(d) if any supplier, dealer or user shall fail or refuse to keep in Texas for the period of time prescribed by law any records required to be kept in Texas by such supplier, dealer or user, or

(e) shall knowingly falsify or make false entry in any records required by law to be kept by such supplier, dealer or user, or

(f) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to examine or audit any books or records of such supplier, dealer or user which the Comptroller is authorized by law to examine or audit, or

(g) shall refuse to permit the Comptroller to inspect or examine any plant, equipment, motor vehicle, material or premises where diesel fuel is processed, stored, sold, delivered, transported, or used by such supplier, dealer or user, or

(h) shall refuse to surrender any motor vehicle for impoundment when such surrender is ordered by a representative of the Comptroller, or any officer authorized by law to impound such motor vehicle, or

(i) shall knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, such supplier, dealer or user, or such director, officer, agent, employee, or receiver or such supplier, dealer or user, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

In addition to the foregoing penalties, a felony conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a supplier or user for a period of two (2) years from the date final judgment is entered.

If the penalties prescribed elsewhere in this Subchapter overlap as to offenses punishable under Article 10.24 of this Subchapter, then the penalties prescribed by said Article 10.24 shall control over all such penalties, except the penalties prescribed in Article 10.23 of this Subchapter. Venue of prosecution under Article 10.24 shall be in Travis County, Texas, or in the county in which the offense occurred.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.25. Misdemeanor Penalties

(1) If any person shall violate, or fail or refuse to comply with any provision of this Subchapter for which no penalty is provided in Article 10.23 or Article 10.24 of this Subchapter, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

(2) If any person shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller under provisions of this Subchapter, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not

less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### SUBCHAPTER B. LIQUEFIED GAS TAX LAW

##### Art. 10.51. Title

This Subchapter, and any amendments thereto, shall be known and may be cited as the "Liquefied Gas Tax Law."

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 9, 1969.]

##### Art. 10.52. Definitions

The following words and phrases as used in this Subchapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Liquefied gas" means all combustible gases which exist in the gaseous state at sixty (60) degrees Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute, but does not include "motor fuel", as that term is defined in Article 9.01 of Chapter 9 of this Title, nor does it include diesel fuel, as defined in Article 10.02(1) of Subchapter A of this Chapter.

(2) "Bulk". Except for deliveries into fuel supply tanks of motor vehicles, the term "bulk" means any quantity of liquefied gas other than in cylinders with a capacity of one hundred (100) pounds or less. Cylinders, as used in this paragraph, do not include containers designed and fitted for use as fuel supply tanks of motor vehicles.

(3) "Motor vehicle" means any automobile, truck, pickup, jeep, station wagon, bus or other self-propelled vehicle designed for use on or required to be licensed for operation upon the public highway. Tractors, combines, and other vehicles not required to be so licensed shall be deemed to be motor vehicles to the extent they are operated upon the public highway with liquefied gas in propelling such vehicles to haul goods, wares, merchandise, or other commodities over the public highways for any purpose except in moving such products between farm or ranch lands owned or controlled by farmers or ranchers, or in traveling over the public highways for any other taxable purpose.

(4) "Public highway" means every way or place open to the use of the public as a matter of right for vehicular travel, including toll roads, notwithstanding that the same may be temporarily closed or travel thereon restricted for any purpose.

(5) "Supplier" means any person

(a) who sells or delivers liquefied gas in bulk quantities to dealers, users or other suppliers, or

(b) who is principally engaged in the business of selling or delivering liquefied gas to consumers, or

(c) who delivers liquefied gas as a dealer into the fuel supply tanks of motor vehicles owned or operated by others.

(6) "Dealer" means any person who, as the operator of a service station or otherwise, delivers liquefied gas into the fuel supply tanks of motor vehicles owned or operated by others.

(7) "User" means any person who delivers, or causes to be delivered, any liquefied gas into the fuel supply tanks of motor vehicles owned or operated by him for use on the public highways of the State of Texas.

(8) "Import-user" means any person who brings liquefied gas into this state in the fuel supply tanks of motor vehicles owned or operated by him for use on the public highways of the State of Texas.

(9) "Lessor" means any person

(a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and

(b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business.

(10) "Consumer" means any person not a supplier, dealer or user who makes purchases of liquefied gas.

(11) "Person" means natural persons, partnerships, firms, associations, corporations (public, private or municipal), trustees, and receivers.

(12) "Service station" means a place of business regularly engaging in the sale and delivery of liquefied gas into motor vehicles for their propulsion.

(13) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(14) "Farm Motor Vehicle" means any truck, pickup, automobile or any other self-propelled motor vehicle designed for use on or required to be licensed for operation upon the public highways, which is used primarily for or in connection with farming, ranching, and other agricultural operations.

(15) "Carburetor dealer" means any person engaged to any extent in the business of selling, leasing, renting, lending or installing any liquefied gas carburetion system on or for use on motor vehicles in this State.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1703, ch. 493, §§ 1, 2, eff. Sept. 1, 1971.]

The 1971 amendatory act, which by sections 1 to 9 amended this article and arts. 10.53, 10.58, 10.59, and 10.61 to 10.63, in sections 10 and 11 thereof provided:

"Sec. 10. All taxes, penalties and interest accrued, and all liens created and bonds executed to secure their payments under any laws amended or repealed by this Act prior to its effective date, are hereby declared to be legal and valid obligations to this State; and any offenses committed or any fines or

penalties incurred under any laws amended or repealed by this Act prior to its effective date shall not be affected by such amendments or repeal, but the punishment of such offenses and the recovery of such fines or penalties shall take place as if the laws amended or repealed had remained in force.

"Sec. 11. All laws or parts of laws in conflict herewith are, insofar as such conflict exists, hereby repealed and this Act shall prevail over any conflicting provisions of law."

### Art. 10.53. Levy of Tax

(1) An excise tax is hereby levied and imposed upon the use of liquefied gas for the propulsion of motor vehicles upon the public highways of this State at the rate of five cents (5¢) per gallon, which said tax shall be collected, reported and paid to the State of Texas as hereinafter provided.

(2) Provided, however, that in lieu of the tax rate specified and levied hereinabove an excise tax shall be and is hereby levied and imposed at four cents (4¢) per gallon of liquefied gas used for the propulsion of buses owned by a transit company

(a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers;

(b) which holds a franchise from such city or town;

(c) whose rates are regulated by such city or town; and

(d) which pays to such city or town a tax on its gross receipts, or which is a municipally owned and/or operated transit company.

(3) Every supplier shall collect and remit the tax, except as hereinafter provided to the contrary, upon each gallon of liquefied gas sold or delivered by him and shall pay the tax upon each gallon of liquefied gas delivered by him into the fuel supply tanks of motor vehicles owned or operated by him. Upon each taxable sale or delivery of liquefied gas to a user or to a dealer or service station for resale and delivery into motor vehicles, the tax shall be collected and remitted to this State on the gross or volumetric gallonage of liquefied gas so sold or delivered without temperature adjustment of the volume so delivered.

It is expressly provided, however, that deliveries of liquefied gas may be made without collecting the tax otherwise imposed under the following circumstances:

(a) when bulk sales or deliveries are made by a bonded supplier to other suppliers holding valid permits, or to bonded dealers, bonded users or special farm users who have secured from the Comptroller and then and there hold valid permits authorizing them to purchase liquefied gas tax free, or

(b) when such deliveries are made by a bonded supplier into a stationary storage facility of a service station from which liquefied gas will be resold and delivered to purchasers for nonhighway use and not otherwise, providing such storage facility is maintained separate and apart from facilities servicing fuel supply tanks of

motor vehicles and is prominently labeled "NOT FOR HIGHWAY USE" in a manner prescribed by the Comptroller and in plain view of the public to indicate that non-tax paid products are contained therein, or

(c) when such deliveries are made into separate fuel tanks not connected, or fitted for connection, to the propulsion system of the motor vehicle, on invoices showing the vehicle unit or highway license number and other information required by Article 10.62 of this subchapter, or

(d) when such deliveries are made into the fuel supply tanks of farm tractors, or other farm or ranch vehicles designed primarily for nonhighway use, owned or operated by farmers and ranchers when said liquefied gas is used upon the public highway only to propel or move such tractors or vehicles to or from lands owned or operated by or under the control of such farmers or ranchers and located within a ten (10) mile radius of the point which is the customary base of operations of said farmers or ranchers, or

(e) when such deliveries are made to a purchaser for exclusive nonhighway use who furnishes the seller a signed statement that none of the liquefied gas purchased or acquired in Texas by him will be delivered by him or permitted by him to be delivered into the fuel supply tanks of motor vehicles; except as otherwise prescribed by rule and regulation of the Comptroller such statement, when furnished to a licensed supplier, shall be effective as long as said licensed supplier continues to sell and deliver liquefied gas to said purchaser, unless the statement is revoked in writing by the purchaser or supplier, or unless notice in writing of a change in the status of the purchaser is given the supplier by the Comptroller, or

(f) when such deliveries are made into the fuel supply tank of any farm motor vehicle displaying a special farm user permit decal issued by the Comptroller as provided in this subchapter.

A taxable use of any part of the liquefied gas purchased tax free pursuant to Subsection (e) above shall, in addition to the penal provisions otherwise provided by law, forfeit the right of the user thereof to purchase liquefied gas tax free for a period of one (1) year from the date of the offense. The Comptroller may, however, issue said person a special nonbonded user's permit, to be effective for the period of the forfeiture authorizing such person to file claim for refund of the tax paid on any liquefied gas used for nonhighway purposes under the refund provisions of Article 10.64 of this subchapter.

(4) Every dealer shall collect the tax, where provided, on each gallon of liquefied gas delivered by him into the fuel supply tanks of motor vehicles, and shall report and pay to this State any tax so collected which has not been paid to a bonded supplier.

(5) Every user except special farm users shall report and pay to this State the tax, at the rate imposed, on each gallon of liquefied gas delivered by him into the fuel supply tanks of motor vehicles, unless said tax has been paid to a supplier or dealer. Every import user shall also report and pay the tax, at the rate imposed, on each gallon of liquefied gas imported into this State in the fuel supply tanks of motor vehicles owned or operated by him and used in the operation of such motor vehicles upon the public highways of this State. No permit shall be required and no tax shall be paid on liquefied gas imported in the fuel supply tanks of any motor vehicle when said fuel supply tanks, and any additional containers, have an aggregate capacity of not more than thirty (30) gallons, and if said motor vehicle is not operated by said user for hire, or compensation, or for commercial purposes.

(6) The tax on one and one-half percent (1½%) of the taxable gallons of liquefied gas sold or distributed in this State shall be allocated to the persons selling, distributing or handling liquefied gas in said State which allocation or allowance shall be deducted by the supplier in the payment to the State of Texas of the taxes herein levied and shall be apportioned among all persons selling, distributing and handling liquefied gas in this State as follows:

I. One percent (1%) to the supplier making the first taxable sale or delivery of such liquefied gas to dealers and users and paying the tax levied hereunder to the State of Texas for the expense of collecting, accounting for, reporting and remitting the taxes collected and keeping records.

II. One-half of one percent (½ of 1%) of the taxable gallons to dealers to cover evaporation and handling losses from the time the liquefied gas is delivered to their storage facilities until it is sold and delivered by them into fuel supply tanks of motor vehicles.

Any user who holds a valid bonded user's permit to report and pay taxes directly to this State on liquefied gas used in the propulsion of motor vehicles upon the public highways of this State shall be entitled to deduct one-half of one percent (½ of 1%) of the taxable gallons upon payment of the taxes to this State by him.

Any person who performs more than one (1) of the functions or activities referred to above (supplier or dealer), shall be entitled to the apportionment or allowance for each such function or activity, subject to the limitations prescribed for each such function or activity, and provided that the aggregate allowance shall never exceed one and one-half percent (1½%).

It is also provided that every supplier who delivers the liquefied gas he sells in vehicle tanks which is unloaded by means of motor-powered pumping units operated by the same motor with liquefied gas fuel supplied from the same fuel tank which is used to propel the vehicle over the public highways shall,

when he has issued or secured an invoice upon each delivery of liquefied gas into the fuel supply tanks of such motor vehicles, containing all the information required to be shown thereon, and has kept the other records required of a supplier, be allowed a deduction from the taxable gallons delivered into the fuel supply tanks of each motor vehicle during the month reported at the rate of one (1) gallon per 1,000 gallons of liquefied gas unloaded by such pumping operation.

In the event the quantity of liquefied gas consumed by power pumping units or other power-take-off equipment of any motor vehicle regardless of the cargo carried can be accurately measured while the vehicle is stationary by any metering or other measuring device designed to measure such fuel separately from fuel used to propel the motor vehicle, the Comptroller is hereby authorized to approve and adopt the use of such measuring device or devices as a basis of determining the quantity of liquefied gas consumed off the highway in such operations.

(7) No city, town, county, or other political subdivision of this State shall levy or collect any excise tax on the sale or use of liquefied gas.

(8) In authorizing a special farm user to pay taxes in advance on the basis of one thousand two hundred (1200) gallons per calendar year for the privilege of thereafter purchasing such product tax free without securing another user's permit and performing the functions required of such user, it is expressly provided that if the Comptroller determines that taxes paid in advance for a special farm user's permit are wholly inadequate to compensate for the taxable gallons being used by the permittee on the public highways, he may require such permittee to pay taxes in advance based upon the actual taxable gallonage being so used which if not paid will be cause for revocation of the permit.

(9) No part of this subchapter shall prevent sale and delivery by a supplier or dealer to any person, user, or other consumer of liquefied gas for highway use when such user or consumer shall pay the prescribed tax to such supplier or dealer upon such delivery.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 9, 1969; Acts 1971, 62nd Leg., p. 1703, ch. 493, §§ 3, 4, eff. Sept. 1, 1971.]

#### Art. 10.54. Dual Carburetion—Presumption of Use

Any person who operates a motor vehicle that is equipped to use liquefied gas and motor fuel interchangeably in the propulsion of said motor vehicle shall be prima facie presumed to have used taxable liquefied gas exclusively in the operation of said motor vehicle, and such person shall be liable for the payment of the tax imposed by this Subchapter on the liquefied gas presumed to have been so used, unless proof of the amount of motor fuel used is maintained.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.55. Unlawful Operations of Motor Vehicles**

(1) It is unlawful to transport liquefied gas in any cargo tank from which liquefied gas is sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting said products.

(2) It is unlawful to operate with liquefied gas any motor vehicle licensed for operation upon the public highway on which a speedometer is not kept at all times in good operating condition to measure and register correctly the miles traveled by such motor vehicle; it is provided, however, any device other than a speedometer which measures and registers correctly the miles traveled may be used on motor vehicles of motor carriers operating under the provisions of the Motor Carrier Act, provided the mileage recorded on such device is inserted in lieu of the speedometer reading on each invoice covering liquefied gas delivered into the fuel supply tanks of such motor vehicles.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.56. Unlawful Sales**

Except in the case of tax free deliveries of liquefied gas authorized by Article 10.53(3) of this Subchapter, it is unlawful to make bulk sales of liquefied gas tax free to any person who (1) is not licensed as a supplier, or (2) is not licensed as a dealer or user of liquefied gas, or (3) does not furnish to the seller the signed statement prescribed in Subsection (e) of said Article 10.53(3).

As a means of determining the validity of a supplier, dealer, or user's permit to purchase liquefied gas tax free, the selling supplier or dealer, or employee or representative thereof, shall examine the permit or photocopy thereof, showing the name of the permit holder, the kind of permit, the permit number, and the period it covers. Provided, however, the Comptroller shall on or before the twentieth (20th) day of December of each calendar year, prepare and mail or distribute to all bonded suppliers a printed alphabetical list of bonded suppliers, bonded dealers and bonded users who are qualified to purchase liquefied gas tax free during the ensuing calendar year and a supplemental list of additions or deletions shall be delivered to said supplier each month thereafter.

The current and effective permits so examined, or the list thereof furnished by the Comptroller, shall serve as evidence of the validity of such permits unless or until the Comptroller notifies such selling supplier of a change in the status of any such permit holder.

In any case where the list of permit holders furnished by the Comptroller or any permit issued to a person authorizing him to purchase liquefied gas tax free under the terms of this Subchapter is not readily available for examination, the selling supplier or other vendor shall make inquiry of the Comptroller

as to whether such person holds a proper permit before making such sale or delivery without collecting the tax imposed herein.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 59, ch. 41, § 1, eff. April 18, 1973.]

**Art. 10.57. Tax Liability on Leased Motor Vehicles**

(1) Except as otherwise provided in this Article, every user or import-user shall be liable for the tax on liquefied gas imported into this State in fuel supply tanks of motor vehicles leased to him and used on the Texas highways to the same extent and in the same manner as liquefied gas imported in his own motor vehicles and used on the public highways of Texas.

(2) Provided, however, a lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the user or import-user when he supplies or pays for the liquefied gas consumed in such vehicles, and such lessor may be issued a permit as an import-user when application and bond have been properly filed with the Comptroller for such permit.

Any lessee may exclude motor vehicles of which he is lessee from his reports and liabilities pursuant to this Subchapter, but only if the motor vehicles in question have been leased from a lessor holding a valid permit as a bonded import-user for the calendar year.

(3) Every such lessor shall file with his application for a bonded import-user's permit one copy of the form lease or service contract he enters into with the various lessees of his motor vehicles. When the import-user permit has been secured such lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy of such permit to be carried in the cab compartment of said motor vehicle, and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned, and the name of the lessee. Such lessor shall be responsible for the proper use of such photocopy of said permit issued and its return to him with the motor vehicle to which it is assigned.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.58. Tax Computation on Mileage Basis**

(1) In the event the tax on liquefied gas imported into this State in the fuel supply tanks of motor vehicles for taxable use on the Texas public highways can be more accurately determined on a mileage basis the Comptroller is authorized to approve and adopt such basis. When an import-user imports liquefied gas into or exports liquefied gas from the State of Texas in the fuel supply tanks of motor vehicles, the amount of liquefied gas consumed in such vehicles on the Texas public highways shall be deemed to be such proportion of the total amount of such liquefied gas consumed in his entire operations

within and without this State as the total number of miles traveled on the public highways within this State bears to the total number of miles traveled within and without this State. The Comptroller may also adopt such mileage basis for determining the taxable highway use of liquefied gas used in motor vehicles which travel regularly over prescribed courses on and off the public highways within the State of Texas.

*[Text of section (2) as amended by Acts 1971, 62nd Leg., p. 711, ch. 775, § 1]*

(2) Any person who operates one or more motor vehicles propelled with liquefied gas within this State with a maximum gross loaded weight in excess of twelve thousand (12,000) pounds, without keeping the invoices and all other records required of him by law, from which the average miles traveled per gallon of liquefied gas consumed can be determined, shall be prima facie presumed to have consumed not less than one (1) gallon of liquefied gas for every four (4) miles traveled by each such motor vehicle. Any person who operates one or more pickups or other motor vehicles propelled with liquefied gas within this State with a maximum gross loaded weight of twelve thousand (12,000) pounds or less without then and there holding a valid permit as required by law, or without keeping the invoices and all other records required of him by law shall be prima facie presumed to have consumed one (1) gallon of liquefied gas for every eight (8) miles traveled, and the taxes due this State may be computed on this basis.

*[Text of section (2) as amended by Acts 1971, 62nd Leg., p. 1705, ch. 493, § 5]*

(2) Any person except persons holding special farm user permits, who operates one or more motor vehicles propelled with liquefied gas within or into this State with a maximum gross loaded weight in excess of twelve thousand (12,000) pounds, without keeping the invoices and all other records required of him by law, from which the average miles traveled per gallon of liquefied gas consumed can be determined, shall be prima facie presumed to have consumed not less than one (1) gallon of liquefied gas for every four (4) miles traveled by each such motor vehicle. Any person except persons holding special farm user permits who operates one or more pickups or other motor vehicles propelled with liquefied gas within or into this State with a maximum gross loaded weight of twelve thousand (12,000) pounds or less without keeping the invoices and all other records required of him by law shall be prima facie presumed to have consumed one (1) gallon of liquefied gas for every eight (8) miles traveled, and the taxes due this State shall be computed on this basis.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 711, ch. 75, § 1, eff. April 26, 1971; Acts 1971, 62nd Leg., p. 1705, ch. 493, § 5, eff. Sept. 1, 1971.]

Sections 2 and 3 of Acts 1971, 62nd Leg., p. 711, ch. 75, provided:

"Sec. 2. Saving Clause. All taxes, penalties and interest accrued, and all liens created and bonds executed to secure their payments under any laws amended or repealed by this Act prior to its effective date, are hereby declared to be legal and valid obligations to this State; and any offenses committed or any fines or penalties incurred under any laws amended or repealed by this Act prior to its effective date shall not be affected by such amendments or repeal but the punishment of such offenses and the recovery of such fines or penalties shall take place as if the laws amended or repealed had remained in force.

"Sec. 3. Repealer. All laws or parts of laws in conflict herewith are, insofar as such conflict exists, hereby repealed and this Act shall prevail over any conflicting provision of law."

#### Art. 10.59. Application for Permits

(1) Every person defined herein as a supplier, dealer, carburetor dealer, special farm user, import user or other user shall secure from the Comptroller the kind and class of permit required herein to act in such capacity or to perform such functions. Application shall be filed with the Comptroller for any such permit on a form prescribed by the Comptroller, showing the kind and class of permit desired, and such other information as the Comptroller may require. It is expressly provided, however, that each applicant for a special farm user permit shall file with and as a part of such application and each renewal thereof, information showing for each motor vehicle equipped to use liquefied gas for its propulsion, the make, the motor number or other identification number, and the total mileage recorded on the speedometer of the motor vehicle at the time application is filed, and said information shall be filed with the Comptroller for each and every motor vehicle equipped to use liquefied gas as a fuel which is thereafter purchased or acquired or put into operation by said permit holder.

The Comptroller may, if in his opinion any person holding a permit as a supplier, dealer, carburetor dealer, import user, or user other than a "special farm user," has fully performed all of the conditions and requirements imposed upon him by this Subchapter, including the payment to this State of all taxes collected or required to be collected, and all taxes due or accruing upon the use of liquefied gas by said person, waive the requirement for filing the application for permit or renewal thereof, and automatically issue said person the kind and class of permit previously held by him to be effective for the ensuing calendar year.

(2) Any carrier operating motor vehicles into this State for commercial purposes may make application for a trip permit which shall be good for a period of not more than twenty (20) consecutive days beginning and ending on the dates specified on the face of the permit issued. A fee for such trip permits shall be required which shall be in an amount equivalent to the tax payable on the quantity of liquefied gas that could be imported in the fuel supply tanks of such motor vehicles, but never less than Five Dollars (\$5). Such fees shall be in lieu of the use tax otherwise assessable against the permit holder for importing and using liquefied gas in motor vehicles on the public highways of this State, and no reports of mileage shall be required with respect to such vehicles. All such fees collected by the Comptroller shall be allocated to the same funds to which the liquefied gas taxes collected hereunder are allocated.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1705, ch. 493, § 6, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 60, ch. 41, § 2, eff. April 18, 1973.]

#### Art. 10.60. Bonds

(1) Every person who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the sale or delivery of liquefied gas or of taxes incurred upon the use of said products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than two (2) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000) if filed by a supplier nor less than Five Hundred Dollars (\$500) if filed by a dealer or user.

Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from the date it is made effective, until or unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Subchapter, or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person.

Every such bond shall be continuous in form and shall be automatically extended from calendar year to calendar year and shall constitute a new and separate obligation, in the amount of the penal sum named therein, for each calendar year while such bond is in force; and provided said bond shall remain in effect until the surety on said bond is released or discharged as herein provided in this Article.

(2) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one month if, in his opinion, an existing bond has become insufficient. If any supplier or any user licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed

with the Comptroller at his Office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of such person.

(3) Any person who has filed with the Comptroller a bond as a motor fuel distributor under the terms and conditions provided in the Motor Fuel Tax Law, Chapter 9, Article 9.07 of this Act, may extend the terms and conditions of said distributor's bond, by rider or bond form approved by the Comptroller, to include coverage of all liabilities and conditions imposed by this Subchapter upon the supplier, dealer or user to whom said extension is made applicable. The amount of bond that may be required of a supplier, dealer or user shall not exceed the maximum amount provided by said Motor Fuel Tax Law for a motor fuel distributor's permit.

(4) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and a class in which funds of the University of Texas may be legally invested.

Such cash or securities shall be released within sixty (60) days after cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller.

The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover liquefied gas taxes, costs, penalties, and interest found to be due this State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 61, ch. 41, § 3, eff. April 18, 1973.]

Sections 4 to 6 of the 1973 Act provided:

"Sec. 4. It is expressly provided that all existing bonds which have been issued for the calendar year, 1973, and are now in effect shall remain in full force and effect for the balance of the calendar year as if the law had not been amended, but all new bonds executed or issued after the effective date of this Act shall be subject to the provisions of this Act. It is further provided that all taxes, penalties, and interest incurred and all liens created and bonds executed to secure their payment under any laws repealed or amended by this Act prior to its effective date are hereby declared to be legal and valid obligations to this state; and any offense committed or any fines or penalties incurred under any laws repealed or amended by this Act prior to its effective date shall not be affected by the repeal or amendment of any such laws but the punishment of such offenses and recovery of such fines, penalties, and interest shall take place as if the laws repealed or amended had remained in force.

"Sec. 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable.

"Sec. 6. All laws or parts of laws in conflict herewith are, insofar as such conflict exists, hereby repealed and this Act shall prevail over any conflicting provision of law."

#### Art. 10.61. Permits

(1) Upon approval of an application and approval of any bond required, the Comptroller shall issue to the applicant a permit authorizing him to engage in the kind of business or other operation or to perform the functions set out in and authorized by the class of permit so issued. The permits shall be issued for each calendar year, or any unexpired part of a year, and shall be effective from the date of issue to the end of such calendar year, unless revoked or suspended for cause, as hereinafter provided. Such permits shall be of the kinds and classifications as set out hereinbelow:

##### BONDED SUPPLIER PERMITS.

Authorizing persons to engage in business as suppliers of liquefied gas to licensed dealers, users, other suppliers, and to other authorized purchasers of liquefied gas.

##### NONBONDED DEALER PERMITS.

Authorizing dealers whose purchases of liquefied gas are predominantly for sale and delivery into the fuel supply tanks of motor vehicles to operate as dealers who pay the tax imposed herein to the supplier of such fuel and claim refund of the tax paid on any liquefied gas thereafter sold for non-highway use.

##### BONDED DEALER PERMITS.

Authorizing dealers whose purchases of liquefied gas are predominantly for resale for nonhighway use to purchase liquefied gas tax free from their supplier and to report and pay taxes to this State on the part of such liquefied gas which is delivered into the fuel supply tanks of motor vehicles.

##### NONBONDED USER PERMITS.

Authorizing users whose purchases of liquefied gas are predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them, or users whose right to purchase liquefied gas tax free has been forfeited, to pay the tax imposed herein to the supplier and claim refund of the tax paid on any liquefied gas thereafter used by them off the public highways.

##### BONDED USER PERMITS.

Authorizing users whose purchases of liquefied gas are predominantly for nonhighway use by them to purchase liquefied gas tax free from their suppliers and to report and pay taxes to this State on the part of such liquefied gas which is delivered into the fuel supply tanks of motor vehicles owned or operated by them.

#### SPECIAL FARM USER PERMITS.

Authorizing users of liquefied gas for the propulsion of farm motor vehicles on the public highways of this State to elect to pay taxes in advance on one thousand two hundred (1200) gallons of liquefied gas for each and every motor vehicle owned or operated by them and propelled in whole or in part with liquefied gas during the calendar year and thereafter to purchase liquefied gas tax free in lieu of securing a bonded user's permit and filing monthly reports and tax payments, and keeping records other than the annual mileage records provided herein. In the event any additional farm motor vehicles equipped to use liquefied gas as a fuel are placed in operation by a special farm user after the first month of any calendar year, a tax shall become due and payable to this State and is hereby imposed at the tax rate prescribed herein on one-twelfth ( $\frac{1}{12}$ ) of one thousand two hundred (1200) gallons per motor vehicle so added for each calendar month or fraction thereof remaining in the current calendar year. The Comptroller shall issue special permit decals for each motor vehicle on which taxes have been paid in advance, which shall be affixed on each such motor vehicle as the Comptroller may direct.

##### BONDED IMPORT-USER PERMITS.

Authorizing users to import or bring liquefied gas into this State in the fuel supply tanks of motor vehicles owned or operated by them, and to report and pay the tax due thereon to this State, and to claim credit or a refund of the tax paid on liquefied gas which is thereafter used in other states.

##### CARBURETOR DEALER PERMITS.

Authorizing persons holding such permits to sell, lease, transfer, or make installation of liquefied gas carburetion systems and requiring reports to be filed monthly with the Comptroller showing the date and recipient of each carburetion system sold, leased, transferred or installed on or for use on a farm motor vehicle and such other information as the Comptroller may require.

Nothing herein shall be construed as permitting any tax free sale or delivery of liquefied gas to an import user, or of permitting any sale and delivery of liquefied gas directly into the fuel supply tanks of a motor vehicle without collecting the tax thereon from the purchaser of such liquefied gas, except sales or deliveries into the fuel supply tanks of farm motor vehicles displaying valid special farm user permit decals issued and held pursuant to the provision of this subchapter.

The Comptroller shall determine from the information shown in the application or other investigation the kind and class of permits to be issued.

A supplier may operate under his supplier's permit as a dealer, an import-user, or as a user without securing a separate permit, but he shall be subject to all other conditions, requirements, and liabilities imposed by this subchapter upon a dealer, an import-

user, or a user. A licensed dealer may use liquefied gas in motor vehicles owned or operated by him without securing a separate permit as a user, subject to all conditions, requirements and liabilities imposed herein upon a user.

If any farm motor vehicle on which taxes have been paid in advance by a special farm user, for which a permit decal has been issued shall, prior to the end of the calendar year, be destroyed, sold, traded or otherwise disposed of, or for any reason the permittee ceases to be the owner or operator thereof, the permittee shall be required to remove such decal and immediately give notice in writing to the Comptroller of such destruction, sale or other disposition thereof. Failure to remove such permit decals and to notify the Comptroller in writing of said removals as above provided shall be grounds for cancellation of the special farm user permit or for requiring such person to secure a nonbonded user's permit; provided, however, when a motor vehicle upon which the tax has been paid in advance is sold or transferred by one special farm user to another special farm user or to a person who shall qualify for and obtain a special farm user permit, the Comptroller may issue written authority to transfer the decal issued and attached to said motor vehicle and all rights thereunder to the purchasing special farm user in such manner and form as may be required by the Comptroller.

If a farm motor vehicle shall be destroyed or sold or transferred so that it shall no longer qualify for the special farm user permit decal, then in that event the owner or operator shall be entitled to a return of the unused portion of the advance taxes theretofore paid to the Comptroller for that calendar year. The owner or operator shall submit to the Comptroller an affidavit identifying the vehicle, and stating the circumstances entitling him to a refund, the initial date of disuse or conversion, the permit and decal number assigned and all other information reasonably required by the Comptroller. Upon receipt of the affidavit and when satisfied as to the circumstances, the Comptroller shall cause to be refunded to the owner or operator that portion of his tax payment that corresponds to the number of complete months remaining in the calendar year for which the tax has been paid, beginning with the month following the date on which the vehicle was no longer utilized. No refund shall be made if the use of the vehicle ceased within the last month of the calendar year.

All permits shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. Permit holders shall reproduce the permit by photostat or other method and keep a copy on display at each additional place of business or other place of storage from which liquefied gas is sold, delivered or used and in each motor vehicle used by the permit holder to transport liquefied gas purchased by him for resale, distribution or use. Persons holding import-user permits shall reproduce the permit and carry a pho-

tocopy thereof with each motor vehicle being operated into or from the State of Texas.

(2) The Comptroller or any authorized representative of the Comptroller, is hereby authorized to cancel or to suspend any permit issued under the terms of this Subchapter or to refuse the issuance, extension, or reinstatement of any permit to any person who has violated, or has failed to comply with, any rule and regulation of the Comptroller or any provision of this Subchapter. Before any such permit may be cancelled or suspended, or the issuance, or extension, or reinstatement of any such permit may be refused, the Comptroller shall give the owner of such permit, or applicant therefor, not less than five (5) days notice of a hearing at the Office of the Comptroller in Austin, Travis County, Texas, or at any district office maintained by the Comptroller's Department, granting said owner or applicant an opportunity to show cause before the Comptroller, or his authorized representative, why such action should not be taken. Such notice shall be in writing and may be mailed by certified or registered mail to said owner or applicant at his last known address or may be delivered by a representative of the Comptroller to the owner or applicant, and no other notice shall be required. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit is cancelled, as above provided, all taxes which have been collected or required to be collected upon the sale or delivery of liquefied gas and all taxes which have accrued upon the use of said product shall ipso facto become delinquent, and the permittee shall forthwith file a report for any period not covered by preceding reports filed by him to the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected or required to be collected and which have accrued from the sale or delivery or use of liquefied gas up to and including the date of cancellation. A new permit shall not be issued to any person who is delinquent in the payment of taxes, penalties or interest.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under a cancelled permit.

An appeal from any order of the Comptroller, or his authorized representative, cancelling or refusing the issuance, extension or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller, or his authorized representative; (2) such proceedings shall have precedence over all other causes of a different na-

ture; (3) trial of all such cases shall commence within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his authorized representative, may be suspended or modified by the Court pending a trial on the merits. [Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1706, ch. 493, § 7, eff. Sept. 1, 1971.]

#### Art. 10.62. Records Required

(1) Every supplier, dealer, import-user or user, whether or not required by the provisions of this Subchapter to secure a permit to sell, deliver, or use liquefied gas shall keep for a period of two (2) years open to inspection at all times by the Comptroller or Attorney General, or their authorized representatives, a complete record of all liquefied gas purchased or received and all of such products sold, delivered, or used by them showing the date of each receipt, the name and address of the person from whom purchased or received, the number of gallons received at each place of business or place of storage in Texas, and showing the date of each sale or delivery, the number of gallons sold or delivered for taxable purposes and the number of gallons sold or delivered for any purpose not subject to the tax imposed herein, and if sold in bulk quantities the name and address of the purchaser, and showing inventories of liquefied gas on hand at each place of business at the end of each month.

(2) Each bulk sale and delivery of liquefied gas shall be covered by an invoice with the name and address of the supplier or dealer and a serial number printed thereon, showing the complete information set out hereinabove for each such sale, one counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purposes above provided. Every delivery of liquefied gas into the fuel supply tank of a motor vehicle shall be recorded upon a serially numbered invoice issued in not less than duplicate on which shall be printed, or stamped with a rubber stamp, the name and address of the supplier, dealer, or user making such delivery and on which shall be shown the name and address or credit card identification of the purchaser, the date of delivery, the number of gallons of liquefied gas so delivered, the total mileage recorded on the speedometer of the motor vehicle into which delivered, and the State highway license or unit number of said motor vehicle. The invoice shall be signed by the driver.

The invoice required above must be demanded by every person purchasing and receiving a delivery of liquefied gas into the fuel supply tank of a motor vehicle in Texas at the time of such delivery and such person shall carry the invoice with the vehicle until the fuel covered by same is consumed. The invoice shall show the tax rate or amount of tax paid or accounted for.

Every supplier, dealer or user making such sales or distribution of liquefied gas and every person so

receiving and purchasing liquefied gas must each retain one copy of each such invoice as part of his permanent records for the time and purposes above provided.

(3) a. Every user except a special farm user shall keep a record of deliveries into his motor vehicles and a complete record of the total gallons of liquefied gas used for other purposes during each month and the purposes for which said liquefied gas was used.

b. A special farm user who has paid taxes in advance on one or more farm motor vehicles shall not be required to issue and keep invoices of each delivery of liquefied gas into the fuel supply tanks of such motor vehicles when proper permit decals are affixed thereto, and shall not be required to keep any other records of liquefied gas purchased and used by him except a record of the total miles traveled by each farm motor vehicle operated by him on which taxes have been paid in advance, from the date the permit decal is issued or assigned to said motor vehicles to the end of the calendar year. Failure to keep such records shall be grounds for cancellation of the special farm user permit.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1708, ch. 493, § 8, eff. Sept. 1, 1971.]

#### Art. 10.63. Tax Payments—Reports

(1) Every supplier and dealer who is licensed herein to collect taxes for the sale or delivery of liquefied gas and every user who is required to pay taxes on the delivery of liquefied gas into the fuel supply tanks of motor vehicles or on the use of imported liquefied gas shall, on or before the 25th day of each calendar month, pay to the State of Texas at the Office of the Comptroller in Austin, Travis County, Texas, the amount of such taxes required to be collected and the amount required to be paid during the month next preceding, unless said taxes have been paid by a user to a licensed supplier as provided in this Subchapter. At the time of making such tax payments, every supplier, dealer, or user who is required to pay any taxes directly to this State, shall file with the Comptroller a report of liquefied gas handled in the form and manner as hereinafter provided.

(2) Every supplier shall, on or before the 25th day of each calendar month, file with the Comptroller upon a form prescribed by the Comptroller an itemized report made subject to the penalties of Article 1.12, Chapter 1 of this Title, accounting for the liquefied gas handled during the preceding month which report shall show the quantities of liquefied gas purchased or received from sources within this State and the quantities received from sources outside of this State, the quantities sold or delivered to dealers and users upon which taxes were required to be collected, the quantities sold and delivered to users without collecting said taxes, the quantities sold and delivered into the fuel supply tanks of motor vehicles, the quantities delivered into the fuel

supply tanks of motor vehicles owned or operated by such supplier and the quantities used by him for other purposes, the total quantities sold or delivered to persons other than dealers, users, or operators of motor vehicles, the quantities lost by fire or other accident, the quantities lost by shrinkage or evaporation, and the total quantities on hand at the beginning and at the end of the month covered by such report. The report shall include a schedule of the total quantities of liquefied gas sold or delivered to users without collecting taxes thereon, and the names and addresses of such users. The Comptroller may in his discretion require selective schedules from any supplier with respect to any purchases, sales or deliveries of liquefied gas. Every supplier shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(3) Every dealer who purchases or acquires liquefied gas tax-free for taxable resale or delivery of any part of said products shall, on or before the 25th day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, made subject to the penalties of Article 1.12, Chapter 1 of this Title, accounting for the liquefied gas handled during the preceding month which report shall show, the quantities of liquefied gas purchased or received and the suppliers from whom received, the quantities of liquefied gas sold and delivered into the fuel supply tanks of motor vehicles, the quantities of liquefied gas sold and delivered for use off the public highways and the purposes for which purchased, the quantities of liquefied gas delivered into the fuel tanks of motor vehicles owned or operated by such dealer and the quantities of liquefied gas used by him for other purposes, the quantities of liquefied gas lost by fire or other accident, and the total gallons of liquefied gas on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such dealer with respect to any purchases, sales or deliveries of liquefied gas. Every such dealer shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(4) Every user except a special farm user who purchases or acquires liquefied gas tax-free shall, on or before the 25th day of each calendar month, file with the Comptroller upon forms prescribed by the Comptroller an itemized report, made subject to the penalties of Article 1.12, Chapter 1 of this title, accounting for the liquefied gas handled during the preceding month, which report shall show the quantities of liquefied gas purchased or received and the suppliers from whom received, the quantities delivered into the fuel supply tanks of motor vehicles owned or operated by such user, the quantities used off the public highways of this State and the purposes for which used, the quantities lost by fire or

other accident or disposed of in any other manner, and the total quantities on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such user with respect to any purchases, deliveries or uses of liquefied gas. Every such user shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

Every carburetor dealer who sells, leases or transfers liquefied gas carburetion systems or who installs such systems for use in supplying liquefied gas to propel motor vehicles in this State, shall on or before the 25th day of each calendar month file with the Comptroller upon forms prescribed by the Comptroller a report made subject to the penalties of Article 1.12, Chapter 1 of this title, accounting for every liquefied gas carburetion system sold, leased, transferred, or installed by such carburetor dealer, and showing such other information as the Comptroller may deem necessary in the control of the taxable use of liquefied gas used to propel motor vehicles upon the public highways of this State.

(5) Every import-user who imports liquefied gas in the fuel supply tanks of motor vehicles operated by him on the public highways of Texas for hire or compensation or for commercial purposes shall, on or before the 25th day of each calendar month, file with the Comptroller on forms prescribed by the Comptroller an itemized report, made subject to the penalties of Article 1.12, Chapter 1 of this Title, accounting for all liquefied gas imported and all liquefied gas used in such motor vehicles during the preceding calendar month, which report shall show for each motor vehicle operated by said user into or from the State of Texas for such purposes, the total miles traveled in Texas and elsewhere, the total quantities of liquefied gas consumed by each motor vehicle in such travel and the average miles traveled per gallon of fuel consumed, the total miles traveled in the State of Texas and the quantities of liquefied gas purchased in Texas and delivered into the fuel supply tanks of each such motor vehicle, and such other information pertinent to the use of liquefied gas in such motor vehicles and the taxes paid or accrued thereon, as the Comptroller may require. The Comptroller may in his discretion permit the filing of such reports on a fleet mileage basis and may require schedules to be submitted as a part of such report with respect to any liquefied gas purchased or used in connection with such operations. Every such user shall attach legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered in the report.

(6) When it shall appear to the Comptroller from evidence submitted by an import-user that records of liquefied gas used by him for taxable purposes on the public highways of this State in motor vehicles operated in interstate travel cannot be secured from all drivers of such vehicles in time to file accurate

reports and tax remittances within the time prescribed by law, the Comptroller may agree to accept monthly reports and tax remittances computed on a fixed mileage basis by which the miles traveled in Texas by said vehicles will be divided by a fixed mileage factor to determine the taxable gallons of liquefied gas used in such vehicles upon the public highways of this State. It is expressly provided, however, that whenever an audit made by the Comptroller from the records required to be kept by the user shows that more liquefied gas was consumed on the Texas highways on a basis of the average miles traveled per gallon of fuel consumed than was reported for tax purposes, the import-user shall be liable for the tax on the additional gallons shown as used, and any penalties and interest accrued thereon.

(7) When it shall appear that a supplier, dealer, or user, to whom the provisions of this Subchapter shall apply, has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any liquefied gas during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such supplier, dealer, or user for the current period, if any, with the total amount of taxes so erroneously paid, or said supplier, dealer, or user may file a claim for refund of the taxes erroneously paid. Such credit shall be allowed or the tax refund claim paid before any penalties and interest shall be applicable.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1709, ch. 493, § 9, eff. Sept. 1, 1971.]

#### Art. 10.64. Refunds

(1) Except as otherwise provided by Article 10.65 of this Subchapter, any dealer who shall have paid the tax at the rate imposed upon any liquefied gas which has been used or sold for use by such dealer for any purpose other than propelling a motor vehicle upon the public highways of this State, or which has been sold to the United States Government for the exclusive use of said government, and any user who shall have paid said tax at the rate imposed upon any liquefied gas which has been used by such user for any purpose other than propelling a motor vehicle upon said public highways, may file claim for a refund of the tax or taxes so paid, less one and one-half percent (1½%) allowed vendors for the expense of collecting and reporting such taxes to this State. Such claims shall be filed with the Comptroller on forms prescribed by the Comptroller and shall show the date of filing and the period covered in the claim, the number of gallons of liquefied gas sold or used for purposes subject to tax refund, and shall show such other facts and information as the Comptroller may require. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as hereinafter provided, or such other information as the Comptroller may require, and shall be filed in the Office of the Comptroller within one (1) year from the first day of the calendar month in

which the liquefied gas was invoiced or required to be invoiced for sale or use, and no claim shall be made by the claimant or approved by the Comptroller after the expiration of one (1) year from the first day of the calendar month in which said liquefied gas was invoiced or required to be invoiced for sale or use.

Every bonded import-user shall be entitled to a credit equivalent to the tax rate per gallon paid on all liquefied gas upon which the Texas tax has been paid and which has thereafter been consumed in motor vehicles outside of the State of Texas. When the amount of credit herein provided to which the import-user is entitled for any calendar month exceeds the amount of tax for which such import-user is liable for liquefied gas consumed in such vehicles during the same month, such excess shall under regulations of the Comptroller, be allowed as a credit against the tax for which such import-user would be otherwise liable for a period of one (1) year from the first day of the calendar month in which the liquefied gas was used; or upon claim filed with the Comptroller within one (1) year from the first day of any calendar month in which said liquefied gas was used, such excess may be refunded as hereinabove provided. Evidence of the mileage traveled and the gallonage consumed and the payment of the liquefied gas tax, on such form as may be required by or is satisfactory to the Comptroller, shall be furnished by such import-user claiming the credit or tax refund herein allowed.

(2) When liquefied gas is sold by a dealer or is appropriated for use by a user for any purposes for which a refund of the tax paid on said products may be claimed as provided herein, such dealer or user shall, at the time of each sale or appropriation for use and not thereafter, make out a serially numbered invoice in not less than duplicate counterparts with the name and address of the dealer or user printed thereon which shall show the date of the sale or appropriation for use, the quantities of liquefied gas sold or appropriated for use, the purposes for which used, as declared by the purchaser or user, and such other information as the Comptroller may require. The invoice shall be signed by the recipient of any such liquefied gas purchased from a dealer. One counterpart of each invoice shall be kept by the dealer or user for a period of two (2) years open to the inspection of the Comptroller or his authorized representatives, and the other counterpart shall be filed as a part of the claim for tax refund as above provided. The Comptroller may authorize the filing of other information in lieu of the invoice counterpart.

(3) Any dealer or user who shall file claim for refund of the tax on any liquefied gas which has been used to propel a motor vehicle, or other conveyance upon the public highways of Texas for any purpose for which a tax refund is not authorized herein, or who shall file any invoice in a claim for tax refund upon which any date, figure, signature, or other material information is false or incorrect,

shall forfeit his right to the entire amount of the refund claim filed.

(4) If upon examination or investigation the Comptroller finds that the claim is just and that the taxes claimed have been paid by the claimant, he shall issue warrant to the claimant in the amount due but no greater amount shall be refunded than has been paid into the State Treasury on any such liquefied gas.

(5) All the moneys paid into the Treasury under the provisions of this Subchapter, except the filing fees provided herein, shall be set aside in the special fund known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on the sale of liquefied gas during the preceding month, upon which a refund may be due, and shall certify to the State Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant loses, or for any reason fails to receive warrant after it has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided in Article 4365, Revised Civil Statutes of Texas.

So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided herein. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one and one-half percent (1½%) deducted originally by the supplier upon the sale or delivery of the liquefied gas shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of the provisions of this Subchapter, and for the payment of expenses in furnishing the claim forms and other forms provided for herein, and the same is hereby appropriated for such purposes. All such filing fees shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.65. Exceptions to Tax Refunds

(1) No tax refunds shall be paid to any person on liquefied gas used in any construction, maintenance or repair work on the public highways of this State when and if such work is paid for from any State funds to which liquefied gas tax collections are allocated or is paid jointly from any such State funds and Federal funds.

(2) The delivery of liquefied gas into the fuel supply tanks of any tractor, truck tractor, vehicle, or machine of any kind or description for use in hauling materials, supplies or products over the public highways to or from any highway construction, maintenance or repair work, shall constitute and be deemed to mean the delivery of liquefied gas into the fuel supply tanks of motor vehicles for taxable use.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.66. Prima Facie Presumptions

(1) Any supplier, dealer, or user who shall fail to keep the records, issue the invoices or file any reports required by this Subchapter, shall be prima facie presumed to have sold, delivered or used for taxable purposes all liquefied gas shown by a duly verified audit by the Comptroller, or any authorized representative thereof, to have been sold or delivered to such supplier, dealer or user, and the Comptroller is hereby authorized to fix or establish the amount of taxes, penalties and interest due the State of Texas from such records of deliveries or from any records or information available to him and if the tax claim as developed from such procedure is not paid, such claim and any audit made by the Comptroller, or an authorized representative thereof, or any report filed by such supplier or user, shall be admissible in evidence in any suit or judicial proceedings filed by the Attorney General, and shall be prima facie evidence of the correctness of said claim or audit; provided that the prima facie presumption of the correctness of the claim may be overcome upon the trial by evidence adduced or by an audit submitted by said supplier, dealer or user.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, report, bond or other instrument referred to in this Subchapter, and that the same had been adopted, promulgated, or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate, shall be admitted in evidence in any action, civil or criminal, involving such order, rule, regulation, report, bond, or other instrument without further proof of such adoption, promulgation, execution or filing, and without further proof of its contents.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.67. Liens**

All taxes, penalties, interest and costs due by any supplier, dealer, user or import-user under the provisions of this Subchapter and all taxes collected by a supplier or dealer and required to be paid to this State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all of the property of any supplier, dealer, user or import-user devoted to or used in his business or other operations as a supplier, dealer, user, or import-user, which property shall include all plants, storage tanks, warehouses, office buildings, pumps, and equipment, vehicle tanks, trucks, trailers, or other vehicles, stocks on hand of every kind and character whatsoever used or usable in such business or other operations including liquefied gas and the proceeds from the sale or delivery of liquefied gas and including cash on hand and in banks, accounts and notes receivable and any and all other property of every kind and character whatsoever and wherever situated, which is devoted to such use, and each tract of land on which such plants, storage tanks and other property is located, or which is used in carrying on such business or other operations.

This lien shall not be valid against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any supplier, dealer, user, or import-user and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such supplier, dealer, user, or import-user and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Com-

troller of Public Accounts with the State Highway Commission.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.68. Civil and Statutory Penalties**

(1) If any person affected by this Subchapter shall fail or refuse to comply with any provision thereof or shall violate the same, or shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller or shall violate the same, he shall forfeit to the State of Texas as a penalty the sum of Twenty-five Dollars (\$25). Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to such penalty, if any supplier, dealer, user or import-user does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said supplier, dealer, user or import-user, within the time prescribed by law said supplier, dealer, user or import-user shall forfeit two percent (2%) of the amount due; and if said taxes are not remitted or paid within ten (10) days from the date the Comptroller gives such supplier, dealer, user or import-user notice in writing directed to his last known address that all taxes which appear to be due have not been paid, an additional eight percent (8%) shall be forfeited. All past due taxes and penalties shall draw interest at the rate of six percent (6%) per annum.

(2) The venue of any suit, injunction or other proceedings at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder, and the enforcement of the terms and provisions of this Subchapter, shall be in a court of competent jurisdiction of Travis County, Texas, or in any other court of competent jurisdiction having venue under existing venue Statutes.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

**Art. 10.69. Impounding Vehicles**

In order to enforce the provision of this Subchapter, the Comptroller or his authorized representatives, or any Highway Patrolman of the Department of Public Safety, any sheriff, constable and their deputies, or any other peace officer, is empowered to stop any motor vehicle which appears to be operating with liquefied gas for the purpose of examining the invoice required to be carried, and examining any permit or copy thereof that may be required to be carried, to take samples from the fuel supply tanks, and for such other investigations as could reasonably be made to determine whether the taxes have been paid or accounted for by a licensed user upon the liquefied gas being used to propel the motor vehicle upon the public highways of Texas. If after said examination or other investigation it is found the owner or operator of said motor vehicle

has not paid said taxes, or does not possess a valid permit as a user or import-user to use such liquefied gas in motor vehicles operating on said public highways, such authorized officers shall impound the motor vehicle, and unless proof is produced within seventy-two (72) hours from the beginning of impoundment that the owner or operator has paid said taxes, and has paid all other taxes established by audit or investigation by the Comptroller, or his authorized representatives, to be due upon the use of liquefied gas for the propulsion of motor vehicles upon the public highways of Texas, or that said owner or operator holds a valid user's or import-user's permit to use liquefied gas for such purposes, the motor vehicle shall be held until all taxes, penalties and interest found to be due this state and all costs of impoundment have been paid, or until said owner or operator has filed bond with the Comptroller payable to the State Treasurer in an amount equal to twice the amount of taxes, penalties, interest and costs found to be due, to guarantee the payment of such liabilities to the State of Texas.

If the taxes, penalties, interest and costs found to be due are not paid, the Comptroller shall certify the claim to the Attorney General who shall file proceedings to foreclose the State's tax lien upon such motor vehicle, or take such other action to recover the amount due the State as provided by law.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.70. Subpoenas

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purposes contemplated by this Subchapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any books, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, the Comptroller or his representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the district court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such

books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Subchapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoena shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of any funds appropriated to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the Office of the Comptroller.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.71. Rules and Regulations

(1) It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, interest and costs, due or that may become due under the provisions of this Subchapter, and to that end the Comptroller is hereby vested with all the power and authority conferred by this Subchapter. The Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Chapter or the Constitution of this State or the United States, for the enforcement of the provisions of this Subchapter and the collection of all taxes, penalties, interest and costs levied hereunder.

(2) Upon final adoption of any rule and regulation, the Comptroller shall file a copy thereof with the Secretary of State, State of Texas, and the same shall have the force and effect of law as of the date of such filing unless a subsequent date is specified therein. Any person who violates or fails to comply with any valid rule and regulation which has been duly promulgated by the Comptroller and filed with said Secretary of State, or violates or fails to comply with any provision thereof, shall be subject to the penalties prescribed by Articles 10.68 and 10.75 of this Subchapter.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.72. Allocation of Funds

Before allocation of the funds collected hereunder is made, one percent (1%) of the gross amount of said fund shall be set aside in the State Treasury in

a special fund for the use of the Comptroller in the administration and enforcement of the provisions of this Subchapter and so much of said amount as may be needed is hereby appropriated for said purpose. Any unexpended portion of such fund shall at the end of each fiscal year revert to the respective funds in the proper proportions to which the liquefied gas taxes are allocated.

Each month the Comptroller shall, after making deductions for refund purposes as provided in Article 10.64 of this Subchapter, and for the administration and enforcement of the provisions of this Subchapter allocate and deposit the remainder of the taxes collected under the provisions thereof, in the proportions as follows: One-fourth ( $\frac{1}{4}$ ) of such taxes shall go to and be placed to the credit of the Available Free School Fund and three-fourths ( $\frac{3}{4}$ ) of such taxes shall go to and be placed to the credit of the State Highway Fund.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.73. Penalty, Failure to Pay or Conversion of Taxes

(1) All taxes collected under the provisions of this Subchapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State of Texas at the time and in the manner provided herein.

(2) If any supplier or dealer, or any director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or any person shall wilfully fail or refuse to pay over to the State of Texas any such tax fund collected by him under the provisions of this Subchapter on or before the date such payment is required to be paid under the provisions of this Subchapter, such supplier or dealer, or such director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or such person, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any supplier or dealer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Subchapter by such supplier or dealer, or any director, officer, agent, employee, trustee, receiver of such supplier or dealer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of Subchapter B of this Chapter, such director, officer,

agent, employee, trustee, receiver of such supplier or dealer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(4) If the penalties prescribed elsewhere in this Subchapter overlap as to the offenses punishable under Article 10.73 of this Subchapter, then the penalties prescribed in Article 10.73 shall apply and control over all such penalties. Venue of a prosecution under Article 10.73 shall be in Travis County, Texas, or in the county where the offense occurred. [Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.74. Felony Penalties

If any supplier, dealer, user or import-user, or any director, officer, agent, employee, or receiver of such supplier, dealer, user or import-user

(a) shall sell, distribute, deliver or use liquefied gas for any purpose for which a permit is required under the provisions of this Subchapter without a valid permit being then and there held by such supplier, dealer, user or import-user, or

(b) shall fail or refuse to make and deliver to the Comptroller within the time prescribed by law any report required to be made and delivered to the Comptroller by such supplier, dealer, user or import-user, or

(c) shall knowingly make and deliver to the Comptroller any report required by law to be made and delivered which is false or incomplete, or

(d) if any supplier, dealer, user or import-user shall fail or refuse to keep in Texas for the period of time prescribed by law any records required to be kept in Texas by such supplier, dealer, user or import-user, or

(e) shall knowingly falsify or make false entry in any records required by law to be kept by such supplier, dealer, user or import-user, or

(f) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to examine or audit any books or records of such supplier, dealer, user or import-user which the Comptroller is authorized by law to examine or audit, or

(g) shall refuse to permit the Comptroller to inspect or examine any plant, equipment, motor vehicle, material or premises where liquefied gas is processed, stored, sold, delivered, transported, or used by such supplier, dealer or user, or

(h) shall refuse to surrender any motor vehicle for impoundment when such surrender is ordered by a representative of the Comptroller,

or any officer authorized by law to impound such motor vehicle, or

(i) shall knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, such supplier, dealer, user or import-user, or such director, officer, agent, employee or receiver of such supplier, dealer, user or import-user shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

In addition to the foregoing penalties, a felony conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a supplier, dealer, user or import-user for a period of two (2) years from the date final judgment is entered.

If the penalties prescribed elsewhere in this Subchapter overlap as to offenses punishable under Article 10.74 of this Subchapter, then the penalties prescribed by said Article 10.74 shall control over all such penalties, except the penalties prescribed in Article 10.73 of this Subchapter. Venue of prosecution under Article 10.74 shall be in Travis County, Texas, or in the county in which the offense occurred.

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

#### Art. 10.75. Misdemeanor Penalties

(1) If any person shall violate, or fail or refuse to comply with any provision of this Subchapter for which no penalty is provided in Article 10.73 or Article 10.74 of this Subchapter, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

(2) If any person shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller under provisions of this Subchapter, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1969, 61st Leg., p. 1407, ch. 427, § 1, eff. Sept. 1, 1969.]

### CHAPTER 11. MISCELLANEOUS TAXES BASED ON GROSS RECEIPTS

#### Article

- 11.01. Express Companies.
- 11.02. Telegraph Companies.
- 11.03. Gas, Electric Light, Power or Water Works.
- 11.04. Car Companies.
- 11.05. Sleeping, Palace or Dining Car Companies.
- 11.06. Telephone Companies.
- 11.07. Tax Paid When Business is Begun After Beginning of Quarter.

#### Article

- 11.08. Additional Reports.
- 11.09. Penalties.
- 11.10. Penalty for Failure to Report.
- 11.11. Penalty for Failure to Pay Tax.

#### Art. 11.01. Express Companies

Each individual, company, association or corporation doing an express business by steam railroad or by water in this State shall make, quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, association or corporation, showing the gross amount received from intrastate business done within this State in the payment of charges from express and freights, or from other sources of revenues received from intrastate business during the quarter next preceding. Said individuals, companies, associations or corporations, at the time of making said report, shall pay the State Treasurer an occupation tax for the quarter beginning on said date equal to two and one half per cent (2½%) of said gross receipts, as shown by said report. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.02. Telegraph Companies

(1) Each individual, company, corporation, or association owning, operating, managing or controlling any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms, and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraph or aerogram charges, including the amount received on full rate messages and aerograms, and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter, excepting all business transacted for and on behalf of the agencies of the United States Government, for which rates are prescribed by the Postmaster General. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to one and one half per cent (1½%) of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to one and three fourths per cent (1¾%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns

of more than two thousand, five hundred (2,500) inhabitants and not more than ten thousand (10,000) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to two and two hundred seventy-five thousandths per cent (2.275%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants according to the last preceding Federal census.

(2) No city or other political subdivision of this State, by virtue of its taxing power, police power or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.03. Gas, Electric Light, Power or Water Works

(1) Each individual, company, corporation, or association owning, operating, managing or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power, or water, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer or superintendent of such company, or corporation, or association, showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power, or water for the quarter next preceding. Said individual, company, corporation, or association, at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to .581% of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.07% of said gross receipts, as shown by said report; and for any incorporated town or city of

ten thousand (10,000) inhabitants or more, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.997% of said gross receipts, as shown by said report. Nothing herein shall apply to any such gas, electric light, power or water works, or water and light plant, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district.

(2) Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation, or association, and distributed by another, the tax shall be paid by the distributor alone.

(3) No city or other political subdivision of this State, by virtue of its taxing power, proprietary power, police power or otherwise, shall impose an occupation tax or charge of any sort upon any person, corporation, or association required to pay an occupation tax under this Article. Nothing in this Article shall be construed as affecting in any way the collection of ad valorem taxes authorized by law; nor impairing or altering in any way the provisions of any contracts, agreements, or franchises now in existence, or hereafter made between a city and a public utility, relating to payments of any sort to a city. Nothing in this Article shall be construed as prohibiting an incorporated city or town from making a reasonable charge, otherwise lawful, for the use of its streets, alleys, and public ways by a public utility in the conduct of its business, and each such city shall have such right and power; but any such charges, whether designated as rentals or otherwise, and whether measured by gross receipts, units of installation, or in any manner, shall not in the aggregate exceed the equivalent of two per cent (2%) of the gross receipts of such utility within such municipality derived from the sale of gas, electric energy, or water. Any special taxes, rentals, contributions, or charges accruing after the effective date of this Act, under the terms of any pre-existing contract or franchise, against any utility paying an occupation tax under this Article, when paid to any such city, shall be credited on the amount owed by such public utility on any charge or rental imposed for the use of streets, alleys, and public ways, levied by ordinance, and accruing after the effective date of this Act; provided that where valid ordinances have been enacted heretofore by cities imposing a charge or rental in excess of two per cent (2%) of the gross receipts of such utilities, nothing herein shall be construed so as to prohibit the collection of such sum as may be due said cities thereunder from the date of said ordinances up to the time this Article shall become effective.

(4) And provided further that utilities paying an occupation tax under this Article shall not hereafter be required to pay the license fee imposed in Article 5a, House Bill No. 18, Chapter 400, Acts of the Forty-fourth Legislature, for the privilege of selling gas and electric appliances and parts for the repairs thereof, in towns of three thousand (3,000) or less in population according to the next preceding Federal Census.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.04. Car Companies

Each individual, company, corporation, or association, residing without this State, or incorporated under the laws of any other state or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first day of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to three per cent (3%) of said gross receipts as shown by said report.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.05. Sleeping, Palace or Dining Car Companies

Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars or sleeping cars within this State for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five per cent (5%) of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.06. Telephone Companies

(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any telephone line or lines, or any telephones within this State and charging for the use of same, shall make quarterly, on the first days of January, April, July, and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to 1.65% of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to 1.925% of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand, five hundred (2,500) inhabitants, and not more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to 2.5025% of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census. Nothing herein shall apply to any telephone line or lines owned and operated by a cooperative, nonprofit, membership corporation.

(2) No city or other political subdivision of this State, by virtue of its taxing power, police power, or otherwise, shall impose an occupation tax or charge of any sort, for the privilege of doing business, upon any person, corporation, or association required to pay an occupation tax under this Article; provided, that nothing in this Article shall be construed to prohibit the collection of ad valorem taxes as provided or not prohibited by law, or any tax now imposed by franchise, and provided further that this Article shall not affect any contract now in existence or hereafter made between a city and the holder of a franchise.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.07. Tax Paid When Business is Begun After Beginning of Quarter

If any individual, company, corporation, firm, or association, in this Chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the begin-

ning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of Fifty Dollars (\$50), payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this Chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.08. Additional Reports

If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, copartnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this Chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, copartnership or association, or one (1) of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.09. Penalties

Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid without having first obtained a permit to do so when required by law, or transacting such business after its permit to do so has been suspended, as provided by this law, shall be liable to a penalty of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.10. Penalty for Failure to Report

Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty (30) days from the date when said report is required by this Chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding One Thousand Dollars (\$1,000).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 11.11. Penalty for Failure to Pay Tax

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax

for thirty (30) days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of five per cent (5%) upon the amount of such tax, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 7, eff. Sept. 1, 1961.]

### CHAPTER 12. FRANCHISE TAX

#### Article

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- 12.21. Additional Franchise Tax.
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#### Art. 12.01. Base and Rate of Tax

(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall file such reports as are required by Articles 12.08 and 12.19 and pay to the Comptroller a franchise tax for the period from May 1 of each year to and including April 30 of the following year which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

##### (a) Basic Tax

(i) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as "taxable capital," allocable to Texas in accordance with Article 12.02 of this Chapter.

As used in this Chapter, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

(ii) Tax on Debt. In addition to the franchise tax due and payable under Subsection (1)(a)(i) of Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under said Subsection (i) for the privilege of doing business in the corporate form during the periods listed below, an additional tax as follows:

For the Period from:	An additional tax for the year of:
May 1, 1968, to and including April 30, 1969,	\$2.25
May 1, 1969, to and including April 30, 1970,	\$2.00
May 1, 1970, to and including April 30, 1971,	\$1.50
May 1, 1971, to and including April 30, 1972,	\$1.00
May 1, 1972, to and including April 30, 1973,	\$0.50

per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of taxable debt allocable to Texas.

For the purposes of this Subsection (1)(a)(ii), "Taxable Debt" shall mean outstanding bonds, notes and debentures, including all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, but this term shall not include instruments which have been previously classified as surplus.

Taxable debt allocable to Texas shall be determined by using the same percentage used to allocate taxable capital to Texas under the provisions of Article 12.02.

The additional franchise tax levied by this Subsection (1)(a)(ii) shall expire after April 30, 1973.

(b) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

(c) Thirty-five Dollars (\$35).

(2) Corporations, other than those enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, which are required

by law to pay annually a tax upon intangible assets, and corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof, and corporations incorporated only for the purpose of maintaining or owning or operating electric inter-urban railways, and corporations, four-fifths ( $\frac{4}{5}$ ) or more of whose assets are invested in, and four-fifths ( $\frac{4}{5}$ ) or more of whose gross income is received from, voting common capital stock which comprises four-fifths ( $\frac{4}{5}$ ) or more of the total fully voting common capital stock of one or more corporations which are public utility corporations under clause (3) hereof, shall be required hereafter to pay a franchise tax equal to one-fifth ( $\frac{1}{5}$ ) of the franchise tax herein imposed against all other corporations under Subsections (1)(a) or (1)(b), but not less than the entire tax imposed by Subsection (1)(c) of this Article.

(3) Except as provided in preceding Subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

(a) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

(b) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

(c) Thirty-five Dollars (\$35).

(4) Corporations engaged partly in the business of a public utility as defined in Subsection (3) of this Article and partly in business embraced in Subsection (1) of this Article shall pay the franchise tax in the following manner: as to those businesses which come under Subsection (1) the tax shall be computed as provided in Subsection (1) on that proportion of the entire taxable capital under said Subsection (1) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation; and to those businesses which come under Subsection (3) the tax shall be computed as provided in Subsection (3) on that proportion of the entire taxable capital under said Subsection (3) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation. The period for which such gross receipts are taken shall be for the same period used in computing taxable capital allocable to Texas in accordance with Article 12.02 of this Chapter.

(5) A corporation now required to pay separate franchise tax for each purpose or business authoriz-

ed by its charter shall hereafter pay only the tax provided hereunder for one purpose, and, until said corporation adopts the provisions of the Texas Business Corporation Act, it shall, in addition, pay one-fourth (¼) of such amount for each additional purpose named in its charter; provided, however, this Article shall not apply to corporations organized under the Electric Cooperative Corporation Act. Provided further, that this Article does not amend, alter, or change in anywise any provisions of Chapter 86, page 163, Forty-fifth Legislature, Acts 1937,<sup>1</sup> and provided further that nothing in this Article shall repeal any total exemption from franchise taxes now provided by law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 182, ch. 97, § 1, eff. April 27, 1961; Acts 1967, 60th Leg., p. 849, ch. 359, § 1, eff. May 1, 1968; Acts 1968, 60th Leg., 1st C.S., p. 2, ch. 2, §§ 1, 2, eff. Oct. 1, 1968; Acts 1969, 61st Leg., p. 2366, ch. 801, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Civil Statutes, art. 1528b.

#### Art. 12.011. Exemption for Homes for Elderly People

The additional franchise tax levied by Subsection (1)(a)(ii) of Article 12.01 of this Title shall not apply to corporations organized for the purpose of providing homes for elderly people sixty-two (62) years of age and older not for profit without regard to whether such corporations are for purely public charity.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 3, § 3, eff. Oct. 1, 1969.]

#### Art. 12.02. Allocation Formula

(1) (a) Each corporation liable for payment of a franchise tax shall determine the portion of its entire taxable capital taxable by the State of Texas by multiplying same by an allocation percentage which shall be the percentage relationship which the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business.

(b) For the purpose of this Article, the term "gross receipts from its business done in Texas" shall include:

(i) Sales of tangible personal property when the property is delivered or shipped to a purchaser within this State, regardless of the F.O.B. point or other conditions of the sale, reduced by the deduction, if applicable, allowable under Subsection (c) of this Section (1);

(ii) Services performed within Texas;

(iii) Rentals from property situated, and royalties from the use of patents or copyrights, within Texas, and

(iv) All other business receipts within Texas.

(c) If any sales covered by Subsection (b)(i) of this Section (1) are sales of food or food products exempted from the Limited Sales, Excise and Use Tax under Section (L), Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, or drugs, medicines, or other products

exempted under Section (M), Article 20.04 of that Title, as amended, then a deduction is allowable to the extent of sales of these exempted items shipped from outside the State of Texas.

If any provision of this Subsection (c) or the application thereof to any person, corporation, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Subsection (c) are declared to be severable and the deduction inapplicable.

(d) For the purpose of this Article, the term "total gross receipts of the corporation from its entire business" shall include all of the proceeds of all sales of the corporation's tangible personal property, all receipts from services, all rentals, all royalties and all other business receipts, whether within or outside of Texas. Provided, however, that, as to the sale of investments and capital assets, the term "total gross receipts of the corporation from its entire business" shall include only the net gain from such sales.

(2) If the allocation and apportionment provisions of Section (1) of this Article do not fairly represent the extent of the taxpayer's business activity in Texas, the taxpayer may petition for and the Comptroller may permit, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in Texas; or

(c) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's capital.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. II, § 1, eff. Sept. 1, 1961; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 7, § 1, eff. May 1, 1970.]

#### Art. 12.03. Corporations Exempt

The franchise tax imposed by this Chapter shall not apply to any

(a) insurance company, surety, guaranty, or fidelity company, transportation company, or sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts;

(b) corporation organized as a railway terminal corporation and having no annual net income from the business done by it; to any corporation having no capital stock and organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the state; to any corporation organized for the purpose of religious worship or for providing places of burial not for private profit; to any corporation organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, which includes non-profit corporations organized for the sole purpose of providing a student loan fund, or for purely public charity; to

any state-chartered building and loan association; to any mutual investment company registered under the Federal Investment Company Act of 1940, as from time to time amended,<sup>1</sup> that holds stocks, bonds, or other securities of other companies, solely for mutual investment purposes; to any non-profit corporation having no capital stock and organized for the purpose of educating the public in the protection and conservation of fish, game, and other wildlife, as well as grasslands and forests; and to any non-profit water supply or sewer service corporation organized in behalf of cities or towns, pursuant to Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1935, as amended;<sup>2</sup> to any corporation organized under the Texas Non-Profit Corporation Act<sup>3</sup> for the purpose of constructing, acquiring, owning, leasing, or operating a natural gas utility facility in behalf of and for the benefit of the city or residents of the city;

(c) non-profit corporation (as defined in the Texas Non-Profit Corporation Act) or a charitable trust providing nursing care, licensed by the Texas Department of Health, and providing housing for the low-income elderly, if the facility

(A) operates at least 100 licensed nursing home beds and at least 250 housing units for low-income elderly; and

(B) is designed for, necessitated by, or is involved in geriatric research programs in the areas of chronic care, paramedical personnel training, nutritional development, and programs of psychological and nutritional research for the elderly, and limited to such purpose;

(d) corporation organized for the purpose of providing homes for elderly people sixty-two (62) years of age and older not for profit without regard to whether such corporations are for purely public charity;

(e) non-profit corporation (as defined by the Texas Non-Profit Corporation Act) engaged exclusively in the business of owning residential property for the purpose of providing cooperative housing for any person or persons;

(f) non-profit corporation organized for the purpose of providing homes for elderly persons sixty-two (62) years old or older or handicapped persons, if the corporation has no capital stock, the management of its affairs is vested in a board of trustees who are selected by a church which is a strictly religious society, and the articles of incorporation provide that in the event of a dissolution of the corporation all of its assets and property will go to and vest in the church.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 41, ch. 27, § 1; Acts 1965, 59th Leg., p. 1450, ch. 637, § 1, eff. June 17, 1965; Acts 1967, 60th Leg., p. 1205, ch. 540, § 1, eff. June 14, 1967; Acts 1969, 61st Leg., p. 1943, ch. 647, § 2, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 1553, ch. 414, § 1, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2917, ch. 967, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 125, ch. 64, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> 15 U.S.C.A. § 80a-1 et seq.

<sup>2</sup> Civil Statutes, art. 1434a.

<sup>3</sup> Civil Statutes, art. 1396-1.01 et seq.

#### Art. 12.04. Foreign Corporations May Withdraw

Any foreign corporation with a certificate of authority to do business within this State may at any time withdraw from doing business within this State by filing a certificate of withdrawal with the Secretary of State who shall file such certificate of withdrawal according to law; provided, however, that prior to the filing of the certificate of withdrawal such corporation shall have paid in full all franchise taxes and penalties owed by such corporation to the State of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 2366, ch. 801, § 2, eff. Sept. 1, 1969.]

#### Art. 12.05. Closed State Bank

No franchise tax shall be assessed against a State Bank after it has closed its doors and has gone into the hands of the Banking Commissioner for liquidation according to law, nor shall any such corporation be liable for any franchise tax while in the hands of the Commissioner for liquidation. The failure of the Commissioner to pay franchise taxes for any bank in his hands for liquidation shall not operate to revoke or forfeit the charter of such corporation.

Provided, that after such liquidation should there be any funds left that would go to the stockholders, then all past due franchise taxes and penalties shall be paid before distributing such funds, if any, to outstanding stockholders.

Provided further, that the Banking Commission of Texas shall not be required to file with the Secretary of State any reports for the purpose of assessing franchise taxes.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 12.06. Initial Tax to be Paid

(1) Every domestic or foreign corporation shall pay its initial franchise tax within ninety (90) days after the expiration of one (1) year from the date of filing its charter or granting its certificate of authority, at which time the tax shall be computed according to its first year's business as prescribed by this Chapter and at the same time, the corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including April 30th following.

Where the corporation's first year from the filing of its charter or from the granting of its certificate of authority ends between January first and May first, there shall also be computed and paid an additional year's tax for the year beginning May first following the end of the first year as above defined, which tax shall be computed from the data contained in the first report filed by such corporation.

(2) All foreign corporations applying for a certificate of authority to do business, shall at the time of filing its application deposit with the Comptroller of Public Accounts the sum of Five Hundred Dollars

(\$500) which sum shall be deposited in a trust fund to be held by the Comptroller of Public Accounts during the time the foreign corporation is engaged in doing business in this State. This deposit shall insure a foreign corporation's payment of all filing fees, filing all franchise tax reports and payment of franchise taxes, penalties and interest due this State according to the provisions of this Chapter. In the event a foreign corporation has ceased doing business in Texas prior to the forfeiture of the corporation's Certificate of Authority, and can demonstrate that all franchise tax reports, franchise taxes and penalties have been filed and paid, such deposit or balance thereof, if any, shall be returned by the Comptroller of Public Accounts to the legal agent of such foreign corporation in this State, designated in conformity with Article 12.11 of this Chapter.

Whenever a corporation's Certificate of Authority to do business in this State be forfeited as provided in this Chapter, the entire amount of said deposit shall likewise be forfeited.

The forfeiture of said deposit shall not bar the State's full recovery of the amount of franchise tax due; however, upon proof by such corporation of the actual amount of such franchise taxes due, and upon the filing of all delinquent tax reports, any amount of said deposit in excess of such franchise tax, including penalty and interest, shall be refunded.

(3) Effective from and after the date of enactment of this Article, each corporation which applies for a Certificate of Authority to do business and each corporation which applied for a renewal of its Certificate of Authority to do business shall comply with (2) above.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 2366, ch. 801, § 3, eff. Sept. 1, 1969.]

#### Art. 12.065. Date Tax is Due

Except as otherwise provided in Article 12.06 for payment of initial taxes, the franchise tax levied by this Chapter shall be due and payable on or before June 15th of each year.

[Acts 1969, 61st Leg., p. 2366, ch. 801, § 4, eff. Sept. 1, 1969.]

#### Art. 12.07. Comptroller of Public Accounts May Require Initial Reports

To determine the amount of any franchise tax payment required by this Chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a certificate of authority to do business within this State, and also to determine the correctness of any report which is provided for in this Chapter, the Comptroller of Public Accounts may, whenever he deems it necessary or proper to protect the interests of the State, require any one (1) or more of the officers of such corporations to make and file in the office of the Comptroller of Public Accounts an affidavit setting forth fully the facts concerning the amount of the surplus and undivided profits and outstanding evidences of indebtedness respectively, if any, of such domestic or foreign corporations.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 2366, ch. 801, § 5, eff. Sept. 1, 1969.]

#### Art. 12.08. Report of Corporation

(1) Except as herein provided all corporations required to pay an annual franchise tax shall, between January first and June 15 of each year, make a report to the Comptroller of Public Accounts on forms furnished by that officer, showing the condition of such corporation on the last day of the corporation's preceding fiscal year.

(2) The report shall also contain any other information concerning the corporation that the Comptroller of Public Accounts shall direct.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 182, ch. 97, § 1, eff. April 27, 1961; Acts 1969, 61st Leg., p. 2366, ch. 801, § 6, eff. Sept. 1, 1969.]

#### Art. 12.09. Initial Reports

Where a domestic corporation is chartered in this State or where a foreign corporation is granted a certificate of authority to do business in Texas it shall file its first report within ninety (90) days from the expiration of one (1) year from the date such charter was filed or certificate granted, as the case may be, showing its condition as of the end of the month nearest the end of such first year.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 71, ch. 24, art. VII, § 8; Acts 1969, 61st Leg., p. 2366, ch. 801, § 7, eff. Sept. 1, 1969.]

#### Art. 12.10. Reports Confidential

Reports made under Article 12.08 (or Articles 12.08 & 12.09) shall be privileged and not for the inspection of the general public, but a bona fide stockholder owning one (1) or more shares of the outstanding stock of any corporation may examine such reports upon presentation of evidence of such ownership to the Comptroller of Public Accounts. No other examination, disclosure or use shall be permitted of the reports except in the course of some judicial proceeding in which the State or any bona fide stockholder is a party or in a suit by the State to cancel the certificate of authority or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws, including the Secretary of State and the State Auditor; provided that the Comptroller of Public Accounts may in his discretion for good cause shown disclose to any interested person the names of the officers and directors and agents for service and the principal office and place of business of any corporation filing a franchise tax report.

The Comptroller is authorized to enter into exchange of information agreements with taxing officials of other states or of the Federal Government. The Comptroller may disclose such information as he deems necessary to taxing officials of other states or of the Federal Government under exchange of information agreements.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 182, ch. 97, § 1, eff. April 27, 1961; Acts 1969, 61st Leg., p. 2366, ch. 801, § 8, eff. Sept. 1, 1969.]

**Art. 12.10A. Disclosing Information on Reports**

If the Secretary of State or any other State officer or employee, or any other person, having access to any franchise tax report filed as provided by law, including any shareholder who is permitted to examine the report of any corporation as provided in Section 2 hereof, shall make known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particulars thereof, or any other information pertaining to the financial condition of the corporation set forth or disclosed in such report, he shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or confinement in jail for not exceeding one year, or both.

[Acts 1931, 42nd Leg., p. 441, ch. 265, § 3.]

**Art. 12.11. Reports Sworn To; Agents for Service**

Each report of any corporation shall be sworn to by either the president, vice-president, secretary, treasurer or general manager, and shall give the name and address of each officer and director. To provide a means for service of process to collect any franchise tax or penalties or for other purposes each corporation, foreign or domestic, shall designate some person residing in this State as an authorized agent for service of process. The person designated and his address shall be given in every report.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 12.12. Authority of Comptroller of Public Accounts, Rules and Regulations**

All reports to the Comptroller of Public Accounts required by this Chapter shall contain such information as the Comptroller of Public Accounts may require. He shall have authority to make and publish rules and regulations not inconsistent with the Constitution or laws of this State or of the United States for the enforcement of this Chapter. The Comptroller of Public Accounts may require any corporation to furnish such additional information from its books and records as may be necessary in determining the amount of taxes that may be due hereunder. The Comptroller of Public Accounts or his authorized representative, or the State Auditor or his authorized representative, shall have full and complete authority to investigate and inquire into and examine the books and records of any such corporation for the purpose of ascertaining the correctness of its franchise tax liability.

Any foreign corporation doing business in Texas under a Certificate of Authority granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Comptroller of Public Accounts, or his authorized representative, or the State Auditor or his authorized representative, to examine its books and records, whether the same be situated within

this State or any other state within the United States, shall thereby forfeit its right to do business in this State; and its Certificate of Authority or charter shall be cancelled or forfeited.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 2366, ch. 801, § 9, eff. Sept. 1, 1969.]

**Art. 12.13. Lien for Taxes and Penalties**

The State shall have a prior lien on all corporate property for all franchise taxes and penalties. At any time after any corporation, domestic or foreign, shall have its right to do business forfeited as provided in this Chapter, the Comptroller of Public Accounts shall file and record with the Clerk of the County wherein the principal place of business of said corporation is located as shown by its Articles of Incorporation or amendments thereto or the certificate of said corporation, a notice of the taxes and penalties accruing under this Chapter and the liens securing the same on a form prepared or approved by the Attorney General of the State of Texas, showing the name of the corporation owing such taxes and penalties, including the franchise taxes then due and owing and calling attention to the possible additional taxes and penalties which might accrue in the future under the terms of this Chapter; and the County Clerk of such county is hereby authorized to and shall file, record and index such notice in his tax lien records. When such notice has been filed, recorded and indexed, the same shall be and constitute notice to all parties dealing with the real and personal property of such corporation wherever situated, of the taxes and penalties then accrued and to accrue in the future and of the liens herein granted the State of Texas. The Comptroller of Public Accounts shall also file and record with the clerk of any county in which he has reason to believe any corporation owing franchise taxes and penalties has real or personal property a copy of said notice and it shall be the duty of the County Clerk of such county to file, record and index such notice in manner and form hereinbefore provided, and when the same has been so filed, recorded and indexed, such notice shall be and constitute additional notice to all parties dealing with the real and personal property of such corporation in said county of such taxes and penalties and the liens granted the State of Texas. The Comptroller of Public Accounts is hereby authorized to execute and deliver (1) complete releases of the liens herein provided for on payment in full of the taxes and penalties, and (2) partial releases releasing particular property upon payment of such sum as the Comptroller of Public Accounts may deem adequate and proper under all circumstances. Such releases shall be on a form prepared or approved by the Attorney General of the State of Texas. No suit in any event shall be brought or instituted for the enforcement of the liens granted the State of Texas by this Chapter unless the same shall be instituted within two (2) years from and after the time the corporation owing such taxes and penalties shall forfeit its right to do business in this State under the provisions of this Chapter; provid-

ed, however, that nothing in this Act contained shall prevent the State of Texas from collecting or enforcing by suit or attachment at any time said franchise taxes and penalties due from the corporation owing the same.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 2366, ch. 801, § 10, eff. Sept. 1, 1969.]

#### Art. 12.14. Failure to Pay Tax and File Reports

Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter or shall fail to file any report provided for in this Chapter when the same shall become due, shall thereupon become liable to a penalty of five per cent (5%) of the amount of such franchise tax due by such corporation, and if said report has not been filed or said taxes have not been paid within thirty (30) days from the date said report or taxes shall have become due, an additional five per cent (5%) of such tax shall be forfeited; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. If the reports required by Articles 12.08, 12.09, and 12.19 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed to such corporation, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Comptroller of Public Accounts. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or certificate of authority of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation unless its right to do business in this State shall be revived as provided in this Chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 9, eff. Sept. 1, 1961; Acts 1969, 61st Leg., p. 2366, ch. 801, § 11, eff. Sept. 1, 1969.]

#### Art. 12.15. Notice of Forfeiture

The Comptroller of Public Accounts shall notify each domestic and foreign corporation which may be

or become subject to a franchise tax under the laws of this State, which has failed to file such report or pay franchise tax on or before the 15th day of June, that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid within thirty (30) days of the mailing of such notice, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. This notice may be either written or printed and shall be verified by the seal of the office of the Comptroller of Public Accounts, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of the corporation. A record of the date of mailing this notice shall be kept in the office of the Comptroller of Public Accounts, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Comptroller of Public Accounts at any time prior to the forfeiture of the charter or certificate of authority of such a corporation as hereinafter provided, the full amount of the franchise taxes, penalties, and interest due by it. When such taxes, penalties, and interest shall be paid to the Comptroller of Public Accounts, he shall revive the right of the corporation to do business within the State. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Comptroller of Public Accounts within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture of the charter of such domestic corporation, or of the certificate of authority of such foreign corporation. It shall be the duty of the Comptroller of Public Accounts, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General the names of all corporations whose right to do business within the State has been forfeited as hereinbefore provided. The Attorney General, upon receiving such certificate, shall forthwith institute suit against such corporations as provided in Article 12.16 of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 10, eff. Sept. 1, 1961; Acts 1969, 61st Leg., p. 2366, ch. 801, § 12, eff. Sept. 1, 1969.]

#### Art. 12.16. Attorney General to Bring Suit

(1) The Attorney General shall bring suit therefor, against any such corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private

corporation or the permit of any foreign corporation, for failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter or permit; and, for the purpose of enforcing the provisions of this Chapter by civil suits, venue is hereby conferred upon the courts of Travis County concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation or permit. Such courts shall also have authority to restrain and enjoin a violation of any provision of this Chapter. In any case in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter or permit of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships.

(2) In all suits instituted against any domestic corporation under the provisions of this Chapter for the forfeiture of its charter and/or the recovery of franchise taxes or penalties, where the officers named in the articles of incorporation, or amendments thereto, or annual reports on file in the office of the Secretary of State, or local agent of such corporation do not reside or cannot be located in the county wherein the principal office of such corporation is located, as stated in the original articles of incorporation of said company or amendments thereto on file in the office of the Secretary of State, or where the principal office of said corporation is not maintained or cannot be found in said County, then service of process, pleadings, and other legal notices of such action may be made upon the Secretary of State of the State of Texas and the same shall be held as due and sufficient service upon such corporation. Whenever process against such corporation is served upon the Secretary of State said service may be made by delivering to the Secretary of State or to the Assistant Secretary of State, duplicate copies of such process whereupon service of such process upon such corporation shall be deemed to be complete and shall constitute valid service upon such corporation. Upon receipt of such process the Secretary of State shall forthwith forward to said corporation a copy of such process by registered mail addressed to the post office named in its Articles of Incorporation or amendments thereto as its principal place of business or to any other place of business of such corporation as shown by the records in the office of the Secretary of State; provided, however, the failure of the Secretary of State to give such notice or to mail copies of such process shall not affect the validity of said service. The certificate of the Secretary of State, under his official seal, of such service shall be competent and sufficient proof thereof. The Secretary of State shall keep a record of all processes served upon him and shall record therein the time of said service and his action in respect thereto. This Act shall be cumulative of all existing Statutes. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 12.17. Forfeiture of Charter and Bill of Review

(1) Upon the rendition by the district court of any judgment of forfeiture under the provisions of this Chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record in his office of such corporation the words, "Judgment of Forfeiture," and the date of such judgment. In the event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such corporation in his office the word, "Appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such corporation in his office and the date of such final disposition.

(2) Upon determination by the Secretary of State that any domestic corporation or foreign corporation whose right to do business has been previously forfeited by the Comptroller of Public Accounts, and which corporation has failed and refused to have its right to do business revived pursuant to the provisions of this Chapter, prior to the first day of January next succeeding the date of forfeiture of its right to do business, and which corporation has no assets from which a judgment for franchise tax, penalties, and court costs may be satisfied, the charter or certificate of authority of any such corporation may be forfeited, which shall be consummated without judicial ascertainment by the Secretary of State entering upon the records of such domestic corporation or upon the certificate of authority to do business of a foreign corporation filed in his office, the words, "Charter Forfeited" or "Certificate Forfeited," giving the date thereof and citing this Act as the authority therefor.

(3) In the event of the forfeiture of the charter or certificate of a domestic or foreign corporation, either by the Secretary of State or by judicial ascertainment, as provided by this Title, the right to do business and the charter or certificate may be revived by the following procedure:

(a) The corporation shall first file all delinquent franchise tax returns as required by law and also pay all franchise taxes, penalties and interest due by said corporation at the time of filing the suit hereinafter mentioned. In the case of forfeiture of a charter or certificate of authority by judicial ascertainment, any stockholder or director or officer of the corporation at the time of forfeiture of the right to do business, or the charter or certificate, may, in the name of the corporation, bring suit in the District Court of Travis County, Texas, in the nature of a bill of review to set aside such

forfeiture. The Secretary of State and Attorney General shall be made defendants in said suit. In the event judgment is rendered setting aside the forfeiture of the charter or the revocation of the certificate of authority, the Secretary of State shall endorse on the records of said corporation the words "Charter Reinstated by Court Order" or "Certificate Reinstated by Court Order" as the case may be, and state the cause and date on which such judgment was entered, and the Comptroller of Public Accounts shall administratively revive the corporation's right to do business in accordance with the provisions of Article 12.15 of this Title, by making the proper notations upon his record of said corporation.

(b) Any corporation, domestic or foreign, whose charter or certificate has been forfeited without judicial ascertainment by the Secretary of State may revive said charter or certificate, by first filing all delinquent franchise tax reports as required by law and by filing all franchise taxes, penalties, and interest due by said corporation at the time of the request for reinstating the charter or certificate hereinafter mentioned. Any stockholder or director or officer of the corporation at the time of the forfeiture of the right to do business, or the charter, or the certificate may, in the name of the corporation, initiate the above proceedings to set aside the forfeiture. Upon such request, and upon the determination that all delinquent franchise tax reports have been filed and all franchise taxes, penalties and interest due by said corporation at the time of the request for reinstatement have been paid, the Secretary of State shall administratively set aside the forfeiture and the Comptroller of Public Accounts shall administratively revive the corporation's right to do business in accordance with the provisions of Article 12.15 of this Title.

If any forfeited corporation's charter or certificate of authority is reinstated, it shall at the time of its request for reinstatement ascertain from the Secretary of State whether the name of the forfeited corporation is available, and if not available, file an amendment to its charter or its certificate of authority changing the name of the corporation. It is further provided that nothing in this Act shall affect the liability of the officers and directors of such corporation for any debts, obligations or liabilities incurred between the date of the forfeiture of the right to do business and the revival as herein provided.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 1268, ch. 582, § 1, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2366, ch. 801, § 13, eff. Sept. 1, 1969.]

#### Art. 12.18. Corporation in Process of Liquidation

If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the

amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation.

The terms "process of liquidation" and "Actual bona fide state of liquidation" shall mean that the corporation by resolution of its board of directors, duly ratified by a majority vote of the stockholders of record thereof, has adopted and is pursuing in good faith a plan of assembling and marshalling the assets of the corporation, paying or settling with the creditors and debtors of the corporation and apportioning the remaining assets, if any, among and to the stockholders of the corporation, all in manner and form provided by the laws of Texas, thereby terminating the business of and dissolving the corporation in the manner and form provided by the laws of Texas. A copy of said plan of liquidation shall be attached to and made a part of the foregoing affidavit of the president and secretary of such corporation.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 12.19. Optional Use of Short Form Return

(1) In lieu of the franchise tax levied by Article 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay a franchise tax for the period from May 1st of each year to and including April 30th of the following year in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00
110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00

(2) "Total assets" as used in this Article means the total of all items reported or reportable as assets on the corporation's Federal income tax return on the last day of the corporation's reporting period for Federal income tax purposes. Said last day must fall within the twelve-month period preceding February 1st of the year in which the alternative franchise tax payable under this Article is to be paid.

(3) The Comptroller of Public Accounts shall prescribe the form of reports to be made by any corporation electing to pay its franchise tax under the provisions of this Article. The Comptroller of Public Accounts may require such reports to contain any or all information required under Article 12.08, 12.09, 12.11 or 12.12 of this Chapter.

There shall be submitted with the report a signed copy of the corporation's Federal income tax return for the period described in Subsection (2) of this Article. All franchise tax reports and income tax returns furnished to the Comptroller of Public Accounts under the provisions of this Article shall be confidential in nature and treated as such by the Comptroller of Public Accounts under the same conditions as provided in Article 12.10. The Comptroller of Public Accounts or the State Auditor may in the execution of this Article cause the books of any corporation electing to pay franchise taxes under this Article to be examined, whether such books be located within this State or any other state within the United States. The Comptroller of Public Accounts may make any rules or regulations necessary for the administration of this Article. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 11, eff. Sept. 1, 1961; Acts 1968, 60th Leg., 1st C.S., p. 3, ch. 2, § 3, eff. Oct. 1, 1968; Acts 1969, 61st Leg., p. 2366, ch. 801, §§ 14, 15, eff. Sept. 1, 1969.]

**Art. 12.20. Additional Franchise Tax for the Period Ending April 30, 1972**

(1) In addition to all other taxes, there is hereby levied on all corporations paying a franchise tax under the provisions of this Chapter for the preceding fiscal year as shown in the report required to be filed with the Comptroller of Public Accounts between January 1 and May 1, 1971 (or the initial or first year report required to be filed with the Comptroller of Public Accounts), under the provisions of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form for the period beginning on the effective date of this Act, and ending April 30, 1972.

(2) The additional franchise tax levied by this Article shall be computed by multiplying the franchise tax due and payable under the provisions of Article 12.01, except Section (1)(a)(ii), and Article 12.19 by 45.45 per cent.

(3) The additional franchise tax levied by this Article shall be paid to the Comptroller of Public Accounts within thirty (30) days after the effective date of this Act. If any corporation fails to pay the additional tax levied by this Article within thirty (30) days after the effective date of this Act, the right of such corporation to do business in this State shall be forfeited on April 1, 1972, which forfeiture shall be consummated without judicial ascertainment by the Comptroller of Public Accounts in the same manner as provided for forfeiture in this Chapter, and provided further that such defaulting corporation shall be subject to the same penalties, liens and conditions as provided in this Chapter.

(4) The Comptroller of Public Accounts shall have the right to make and promulgate rules and regulations and to prescribe and mail forms and notices necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall expire on April 30, 1972. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 3, § 1, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1199, ch. 292, art. 3, § 1, eff. July 1, 1971.]

**Art. 12.21. Additional Franchise Tax**

(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1970, to and including April 30, 1971, and from May 1, 1971, to and including April 30, 1972, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01, except Section (1)(a)(ii), of this Chapter for the aforesaid periods by 18.18 per cent.

(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form from and after May 1, 1970, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 5.00
15,000.00	20,000.00	10.00
20,000.00	25,000.00	10.00
25,000.00	30,000.00	15.00
30,000.00	40,000.00	15.00
40,000.00	50,000.00	20.00
50,000.00	60,000.00	25.00
60,000.00	70,000.00	30.00
70,000.00	80,000.00	35.00
80,000.00	90,000.00	40.00
90,000.00	100,000.00	45.00
100,000.00	110,000.00	50.00
110,000.00	120,000.00	55.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

(4) The State Comptroller of Public Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

(6) The additional franchise tax levied by this Article shall expire on April 30, 1972.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. II, § 2; Acts 1963, 58th Leg., p. 371, ch. 138, § 3, eff. July 1, 1963; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 3, § 2, eff. Oct. 1, 1969.]

**Art. 12.211. Additional Franchise Tax**

(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form from and after May 1, 1972, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01, except Section (1)(a)(ii), of this Chapter for the aforesaid periods by 54.54 per cent.

(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form from and after May 1, 1972, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 20.00
15,000.00	20,000.00	25.00
20,000.00	25,000.00	30.00
25,000.00	30,000.00	35.00
30,000.00	40,000.00	50.00
40,000.00	50,000.00	60.00
50,000.00	60,000.00	75.00
60,000.00	70,000.00	90.00
70,000.00	80,000.00	100.00
80,000.00	90,000.00	115.00
90,000.00	100,000.00	130.00
100,000.00	110,000.00	145.00
110,000.00	120,000.00	160.00
120,000.00	130,000.00	170.00
130,000.00	140,000.00	185.00
140,000.00	150,000.00	200.00

(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

(4) The State Comptroller of Public Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 3, § 4, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1199, ch. 292, art. 3, § 2, eff. July 1, 1971.]

**Art. 12.22. Transfer of Administration**

When administration of the franchise tax is transferred from the Secretary of State to the Comptroller of Public Accounts in accordance with Acts of the Fifty-sixth Legislature, Regular Session, 1959, Chapter 325, all administrative powers and duties incident to collection and administration of the franchise tax conferred upon the Secretary of State by this Chapter shall devolve upon and be exercised by the State Comptroller of Public Accounts.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**CHAPTER 13. TAX ON COIN-OPERATED MACHINES**

Article

- 13.01. Definitions.
- 13.02. Amount of Tax.
- 13.03. Exemptions from Tax.
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- 13.05. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports.
- 13.06. Attachment of License or Permit to Machine.
- 13.07. Rules and Regulations; Forfeitures of Licenses or Permits.
- 13.08. Licenses or Permits; Collection of Tax; Payment of Expenses.
- 13.09. Existing Laws; Violations not Authorized.
- 13.10. Records; Forfeiture of Licenses.
- 13.11. Violations of Act; Penalty; Suit to Recover Penalty.
- 13.12. Offenses; Penalty.
- 13.13. Sealing Machine to Prevent Operations; Penalty for Breaking Seal.
- 13.14. Apportionment of Tax; Tax Levy by Counties and Cities.
- 13.15. Sealing of Machines by City or County.
- 13.16. Taxes, Penalties and Interest under Re-enacted or Repealed Statutes; Offenses and Penalties under Prior Laws.
- 13.17. Regulation of Music and Skill or Pleasure Coin-Operated Machines.

**Transfer of Functions and Change of Name**

*Acts 1971, 62nd Leg., p. 1942, ch. 587, § 2, transferred to the Texas Vending Commission all of the duties, powers, functions, responsibilities and authority heretofore exercised by the Comptroller of Public Accounts under this chapter, effective September 1, 1971. See Civil Statutes, art. 4413(41), § 2.*

*Acts 1973, 63rd Leg., p. 362, ch. 159, § 1, added a section 1A to Civil Statutes, art. 4413(41), which changed the name of the Texas Vending Commission to the Texas Amusement Machine Commission, effective May 23, 1973.*

**Art. 13.01. Definitions**

The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning or having the care, control, management or possession of any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 13.02. Amount of Tax

(1) Every "owner" who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine", as defined herein in Article 13-

01, except as are exempt herein, an annual occupation tax of \$15.00.

(2) Provided that the first money taken from each coin-operated machine each calendar year shall be paid to the owner to reimburse the payment of that year's annual occupation tax levied above and those levied by any city or county. No owner shall agree or contract or offer to agree to contract to waive this reimbursement either directly or indirectly. No owner shall agree or contract with a bailee or lessee of a coin-operated machine to compensate said bailee or lessee in excess of fifty percent (50%) of the gross receipts of such machine after the above reimbursement has been made. In addition to all other penalties provided by law the Comptroller shall revoke any license held under Article 13.17 by any person who violates this Subsection.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. III, § 1, eff. Sept. 1, 1961; Acts 1969, 61st Leg., p. 1606, ch. 497, § 2, eff. Sept. 1, 1969.]

#### Art. 13.03. Exemptions from Tax

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax, stamp vending machines, and "service coin-operated machines," as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. III, § 2, eff. Sept. 1, 1961.]

#### Art. 13.04. Public Nuisance

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the Comptroller of Public Accounts, his agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 13.05. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports

(1) Any person who shall invoke the power and remedies of injunction against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin him from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin the collection of the taxes levied herein the applicant

therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the Comptroller of Public Accounts of this State or their authorized representatives, a well-bound book record, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such book record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the Comptroller of Public Accounts daily, excluding Sundays and legal holidays, a report on a form to be prescribed by said Comptroller, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The Comptroller of Public Accounts of this State, or his authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so

deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the Comptroller of Public Accounts, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the Comptroller of Public Accounts all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the Comptroller of Public Accounts of this State to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 13.06. Attachment of License or Permit to Machine**

Provided further, the license or permit issued by the Comptroller to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same, or posted in a conspicuous place at or near the machine so as to be easily seen by the public. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 13.07. Rules and Regulations; Forfeitures of Licenses or Permits**

(1) The Comptroller of Public Accounts shall have the authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the Comptroller of Public Accounts shall have the power and authority to forfeit all licenses or permits issued to any of the foregoing persons by giving written notice, stating the reason justifying such forfeiture and the same shall be forfeited five (5) days from date of such notice. No new licenses or permits shall be issued within a period of one (1) year to anyone whose licenses or permits have been forfeited, except at the discretion of the Comptroller of Public Accounts. If

the licenses or permits of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is forfeited, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses or permits are reinstated or until new licenses or permits are granted.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 13.08. Licenses or Permits; Collection of Tax; Payment of Expenses**

The Comptroller of Public Accounts of this State is hereby authorized, ordered and directed to collect, and issue licenses or permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars (\$25,000) of the funds derived under the provisions of this Chapter shall be deposited annually to the credit of the General Revenue Fund as payment for the services of the Comptroller and other State agencies in the enforcement of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 265, ch. 140, § 1, eff. Sept. 1, 1961.]

**Art. 13.09. Existing Laws; Violations not Authorized**

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 13.10. Records; Forfeiture of Licenses**

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and Comptroller of Public Accounts of this State, or their authorized representatives, a complete book record in a well-bound book of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine. The Comptroller of Public Accounts shall be authorized and it shall be his duty to forfeit all licenses, permits of every owner failing to keep such

records or failing to present such records for inspection at any time upon demand by said Comptroller of Public Accounts or his authorized representatives. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 13.11. Violations of Act; Penalty; Suit to Recover Penalty**

If any "owner" of a coin-operated machine within this State shall

(a) deliver to or permit to be delivered to any "operator" a coin-operated machine without a valid license or permit issued by the Comptroller of Public Accounts of this State being attached thereto, or

(b) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said license or permit being attached thereto, or

(c) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or

(d) if any person required to keep records of coin-operated machines in this State shall falsify such records, or

(e) shall fail to keep such records, or

(f) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or

(g) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(h) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Chapter, or

(i) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or

(j) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Five Dollars (\$5) nor more than Five Hundred Dollars (\$500).

Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 13.12. Offenses; Penalty**

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached there-

to a valid license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or

(b) if any person required to keep records of coin-operated machines in this State shall falsify such records, or

(c) shall fail to keep such records, or

(d) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or

(e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(f) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Chapter, or

(g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or

(h) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Dollars (\$5) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 13.13. Sealing Machine to Prevent Operations; Penalty for Breaking Seal**

Provided that the Comptroller of Public Accounts, or his authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said Comptroller or his authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the Comptroller shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The Comptroller shall charge a fee of \$25.00 for the release of any coin-operated machine sealed for non-payment of tax.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1606, ch. 497, § 3, eff. Sept. 1, 1969.]

#### **Art. 13.14. Apportionment of Tax; Tax Levy by Counties and Cities**

Except as herein provided in this Chapter, one-fourth ( $\frac{1}{4}$ ) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths ( $\frac{3}{4}$ ) of the net revenue derived from this Chapter shall be credited to the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941. Provided that all counties and cities within this State may levy an occupation tax on coin-operated

machines in this State in an amount not to exceed one half ( $\frac{1}{2}$ ) of the State tax levied herein.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 13.15. Sealing of Machines by City or County**

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars (\$5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 13.16. Taxes, Penalties and Interest under Re-enacted or Repealed Statutes; Offenses and Penalties under Prior Laws**

All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### **Art. 13.17. Regulation of Music and Skill or Pleasure Coin-Operated Machines**

##### **Purpose**

Sec. 1. The purpose of this Article is to provide comprehensive regulation of music and skill or pleasure coin-operated machines and businesses dealing in these machines, and to prevent persons in these businesses from having certain concurrent financial interests in, or unauthorized financial dealings with, certain alcoholic beverage businesses.

##### **Construction**

Sec. 1(a). Notwithstanding any language herein contained to the contrary, no provision herein shall be construed to require a fee for a general business license for an individual who, on the effective date of this Act, only owns a single place of business and owns a music or skill or pleasure coin-operated machine in such place of business.

Notwithstanding any language in this Chapter or any other Chapter to the contrary, the term "music or skill or pleasure coin-operated machine" shall include coin-operated billiard and pool games and shall exclude coin-operated amusement machines designed exclusively for children.

#### Definitions

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

(1) "person" includes any association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them;

(2) "financial interest" includes any legal or equitable interest, and specifically includes the ownership of shares or bonds of a corporation.

#### Administration

Sec. 3. The Comptroller shall administer this Article. He or the Attorney General may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this Article or to determine whether violations may exist. The Comptroller shall institute civil proceedings through the Attorney General in the name of the State against violators. If the Comptroller finds evidence of violation of penal provisions, he shall present it to the District or County Attorney of the county wherein such violation occurred.

#### Powers of Comptroller

Sec. 4. In addition to his existing powers, the Comptroller may, for the purpose of administering this Article,

- (1) prescribe all necessary regulations;
- (2) hold hearings and prescribe rules of procedure and evidence for the conduct of hearings;
- (3) issue, suspend, or cancel licenses;
- (4) prescribe the procedure for registration of music and skill or pleasure coin-operated machines and the method of securely attaching registration stamps;
- (5) disclose confidential information to appropriate officials; and
- (6) prescribe the form and content of
  - (a) license applications;
  - (b) license certificates;
  - (c) registration stamps;
  - (d) reports concerning the location of coin-operated machines; and
  - (e) reports of the consideration of each party to contracts concerning the placement of coin-operated machines in establishments where alcoholic beverages are sold or served for on-premises consumption.

#### Delegation of Authority

Sec. 5. The Comptroller may delegate to an authorized representative any authority given him by this Article, including the conduct of investigations and the holding of hearings.

#### Agency Cooperation

Sec. 6. All state agencies are directed to cooperate with the Comptroller in his investigatory functions under this Article, and shall provide him access to their relevant records and reports including those declared or designated as confidential by other law.

#### Confidentiality; Penalty for Disclosure

Sec. 7. (1) All information derived from books, records, reports, and applications required to be made available under this Article to the Comptroller or the Attorney General is confidential unless specifically designated a public record, and may be used only for the purpose of enforcing the provisions of this Article.

(2) Any employee of the Comptroller or Attorney General who discloses confidential information obtained from the administration of this Article to an unauthorized person is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.

#### License Required; Penalty; Exceptions

Sec. 8. (1) No person shall engage in business to manufacture, own, buy, sell, or rent, lease, trade, lend, or furnish to another, or repair, maintain, service, transport within the state, store, or import, a music coin-operated machine or a skill or pleasure coin-operated machine without a license issued under this Article.

(2) A person who knowingly violates this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).

(3) No license is required for a corporation or association organized and operated exclusively for religious, charitable, educational, or benevolent purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, to own, or lease or rent from another, a music or skill or pleasure coin-operated machine for the corporation's or association's exclusive use and in furtherance of the purposes for which it is established.

(4) No license is required for an individual to own a music or skill or pleasure coin-operated machine for personal use and amusement in his private residence.

(5) No license is required for any person subject to regulation by the Railroad Commission of Texas to transport or store in the due course of business a music or skill or pleasure coin-operated machine not owned by him.

(6) A person who knowingly secures or attempts to secure a license under this Article by fraud, misrepresentation or subterfuge is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than two nor more than five years, or by a fine of not more than \$10,000.00, or by both.

#### Nature of License

Sec. 9. A license issued under this Article

(1) is an annual license which expires on December 31st of each year, unless it expires as provided in subdivision (5) of this Section or is suspended or cancelled earlier;

(2) is effective for a single place of business;

(3) vests no property or right in the licensee except to conduct the licensed business during the period the license is in effect;

(4) is nontransferable, nonassignable, and not subject to execution; and

(5) expires upon the death of an individual licensee, or upon the dissolution of any other licensee.

#### Temporary Extension of License

Sec. 10. When a license issued under this Article expires because of the death of an individual licensee, or the dissolution of any other licensee, or upon conditions involving receivership or bankruptcy, the Comptroller, except for good cause shown, shall permit the successor in interest to operate the business under the same license through December 31st of the year. The Comptroller shall give this permission in writing upon certification by the County Judge of the county in which the business is located that the person requesting the extension is the successor in interest. The extended license is subject to suspension or cancellation as is any other license issued under this Article. An original license application is necessary upon expiration of the extension.

#### Display; Penalty

Sec. 11. (1) A person licensed to do business under this Article shall prominently display his current license certificate at his place of business at all times.

(2) A person who violates this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.00.

#### Application for License

Sec. 12. (1) An application for a license to do business under this Article shall contain a complete statement regarding the ownership of the business to be licensed. This statement of ownership must specify

(a) the nature of the business entity to be licensed;

(b) the name and residence address of every person who has a financial interest in the business, and the nature, type, and extent of that financial interest, except corporate applicants may omit any shareholder holding less than 10% of the corporate shares.

(2) The application shall designate a single individual who is responsible for keeping a record and reporting to the Comptroller the following information regarding each music or skill or pleasure coin-operated machine owned, possessed, or controlled by the licensee:

(a) the make, type, and serial number of machine;

(b) the date put in operation;

(c) the dates of the first, and the most recent registration of the machine;

(d) the specific location of each machine;

(e) any change in ownership of a machine.

(3) The application shall be accompanied by a sworn written statement executed by the individual designated to maintain the records and make reports that he is aware of and accepts this responsibility.

(4) The individual designated to maintain the records and to make reports must have the following relationship to the business to be licensed:

(a) the owner of a sole proprietorship;

(b) a partner of the partnership;

(c) an officer of the corporation;

(d) a trustee of the trust;

(e) a receiver of the receivership; or

(f) an officer or principal member of the association, joint venture, organization, or other entity not specified.

(5) The Comptroller may require any other pertinent information to be included in the application.

(6) The application must contain a statement that the information contained in it is true and complete, and this statement shall be made under oath.

(7) The statement of ownership contained in the application becomes a public record upon issuance of a license. Other information in the application is confidential.

#### Fee with Application

Sec. 13. The application must be accompanied by the annual license fee in the form of a cashier's check or money order payable to the State Comptroller.

#### Records and Reports; Offenses; Penalty

Sec. 14. (1) The person designated in the license application to do so shall keep records and make reports to the Comptroller of the information specified in Subsection (2) of Section 12 of this Article at intervals specified by the Comptroller, and upon demand by the Comptroller. He shall immediately notify the Comptroller in writing of any change in ownership of the licensed business.

(2) It is an offense for a person to willfully fail or refuse to make reports to the Comptroller as required by this Section.

(3) It is an offense for a person to willfully withhold or conceal any information required to be reported by this Section from a person who has the duty to make the report.

(4) A person who violates this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00).

Types of Licenses

Sec. 15. (1) A person who wishes to engage in certain business dealing with music coin-operated machines or skill or pleasure coin-operated machines shall apply for a general business license, or an import license, or both.

(2) A general business licensee may engage in business to manufacture, own, buy, sell, rent, lease, trade, repair, maintain, service, transport or exhibit within the state, and store music and skill or pleasure coin-operated machines.

(3) An import licensee may engage in business to import, transport, own, buy, repair, sell, and deliver, music and skill or pleasure coin-operated machines, for sale and delivery within this State.

Fees

Sec. 16. (1) The annual license fee for either an import or a general business license shall be based on the number of music and the number of skill and pleasure, coin-operated machines in which each licensee shall have any interest as set forth in Section 8 of this article; and said annual fee shall be Ten Dollars (\$10.00) for each such coin-operated machine, but in no event shall such fee be less than Fifty Dollars (\$50.00) nor more than Three Thousand Dollars (\$3,000.00). This fee shall be in addition to the tax levied by Article 13.02.

(2) After issuance of a license to a licensee, the Texas Vending Commission may not refund any portion of a license fee.

Removal of Stamp Prohibited; Penalty

Sec. 17. (1) No person other than the Comptroller may intentionally remove a current registration stamp from a music or skill or pleasure coin-operated machine.

(2) A person who violates this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.00.

License as Consent to Entry

Sec. 18. Acceptance of a license issued under this Article constitutes consent by the licensee that the Comptroller or any peace officer may freely enter

upon the licensed business premises during normal business hours for the purpose of ensuring compliance with this Article.

Mandatory Grounds for Refusal, Suspension, Cancellation or Refusal of Renewal of License

Sec. 19. (1) The Comptroller shall not issue a license for a business under this Article if he finds that the applicant

(a) has been finally convicted of a felony in a court of competent jurisdiction during the ten years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the five years preceding the filing of the application.

(2) The Comptroller may not renew a license for a business under this Article if he finds that during the time the previous license was held the licensee

(a) has been finally convicted of a felony in a court of competent jurisdiction; or

(b) has been placed on probation as a result of a felony prosecution.

(3) The Comptroller may not issue or renew a license for a business under this Article, and shall suspend for any period of time, or cancel a license, if he finds that the applicant or licensee is indebted to the State by judgment for any fees, costs, penalties, or delinquent taxes.

(4) The Texas Vending Commission shall not renew a license for a business under this article if it finds that a partner or major stockholder, or any one employed by a licensee has been convicted of a felony in a court of competent jurisdiction, regardless of whether the sentence was probated or served, within five (5) years from the date of such person's first employment or association with the business, or thereafter.

Discretionary Grounds for Refusal, Suspension, or Cancellation of License

Sec. 20. The Comptroller may refuse to issue or renew a license, and may suspend for any period or cancel a license if he finds that

(1) the applicant or licensee has intentionally violated any provision of, or any regulation authorized by this Article during

(a) the two years preceding the date of the application for an initial license; or

(b) the period the current license was held;

(2) the applicant or licensee has intentionally failed to answer any question or has made a false statement in, or in connection with, his application or renewal;

(3) the manner in which the applicant proposes to, or the licensee does, conduct his business is of such a nature which, based on the general welfare, health, peace, and safety of the people, warrants a refusal, suspension, or cancellation of the license;

(4) that issuance of, or failure to suspend or cancel, the license would be contrary to the intent and purpose of this Article.

#### Applicant and Licensee Defined

Sec. 21. In Sections 19 and 20 of this Article, unless the context requires a different definition, the words "applicant" and "licensee" include each partner of a partnership; each trustee of a trust; each receiver of a receivership; each officer and director of a corporation; and each shareholder owning not less than 25 percent of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and, when applicable in context, the business entity itself.

#### Notice and Hearing

Sec. 22. (1) An applicant or licensee is entitled to at least ten days' notice and a hearing in the following instances:

- (a) after his original application for a license has been refused;
- (b) before his application for a renewal of a license may be refused;
- (c) before his license may be suspended or cancelled.

(2) Notice of hearing for refusal, cancellation, or suspension may be served personally by the comptroller or his authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address. In the event that notice cannot be effected by either of these methods after due diligence, the Comptroller may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs.

#### Notice of Comptroller's Order

Sec. 23. (1) Any order refusing an application or renewal application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant or licensee.

(2) An order cancelling or suspending a license shall state the reasons for the cancellation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(3) Delivery of the Comptroller's order of refusal, cancellation, or suspension may be given by

- (a) personal service upon an individual applicant or licensee;
- (b) personal service upon any officer or director or partner or trustee or receiver, as the case may be;
- (c) personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;
- (d) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee;

(e) posting notice upon the outside door of the business premises of the applicant or licensee.

(4) Notice is complete upon performance of any of the above. Cancellation or suspension takes effect upon service.

#### Appeal from Comptroller's Order

Sec. 24. A person who is refused a license, or whose license has been suspended or cancelled, may appeal the Comptroller's order to the District Court by filing a petition in the court within 30 days after the effective date of the order. Venue is in Travis County, Texas.

Sec. 25. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from Justice of the Peace Courts to County Courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provision of this Act. The Legislature hereby specifically declares that the provisions of this Section shall not be severable from the balance of this Act, save for Section 2 of this Act, and further specifically declares that this Act, save for Section 2 of this Act, would not have been passed without the inclusion of this Section. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this entire Act, save for Section 2 of this Act, and in such event this entire Act, save for Section 2, shall be null, void and of no force and effect.

#### Unauthorized Contracts Prohibited; Penalty

Sec. 26. (1) No person licensed under this Article may place or operate a music or skill or pleasure coin-operated machine in an establishment where alcoholic beverages are sold or served for on-premises consumption except by written contract. The contract must include all provisions of the agreement between the parties and a statement sworn to by both parties that there are no other understandings or agreements between the parties.

(2) The licensee shall

- (a) promptly file a copy of the contract with the Comptroller, unless on terms previously filed with the Comptroller;

(b) furnish a copy to the manager of the establishment where the machine is placed; and

(c) retain a copy at his principal place of business.

(3) The manager of the establishment shall retain his copy of the contract on his premises.

(4) A person who knowingly violates this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.00.

**Prohibited Financial Relationships; Credit Transactions; Penalty**

Sec. 27. (1) It shall be unlawful for a person who has a financial interest in a business required to be licensed by this Article to knowingly have a financial interest in a business engaged in selling or serving alcoholic beverages for on-premises consumption unless otherwise permitted in this Article. No bona fide financial interest or commitment in existence prior to September 1, 1969, shall be deemed a violation of this Article, but no such interest or commitment may be renewed or altered after September 1, 1969, without the written approval of the Comptroller, provided that this prohibition shall not apply if the business engaged in selling or serving alcoholic beverages be a corporation whose securities are registered under the laws of the United States or the State of Texas.

(2) Nothing in this Article shall be construed to prohibit a person who has a financial interest in a business required to be licensed by this Article from having any interest in real property on which is located a business engaged in selling or serving alcoholic beverages for on-premises consumption.

(3) It shall be unlawful for a person who has a financial interest in a business required to be licensed by this Article or for any agent on behalf of such person to contract either orally or in writing to convey an interest in real property whether by lease, sub-lease or otherwise if such contract contains a provision or provisions in any way limiting the other party's right to secure music or skill or pleasure coin-operated machines from any source.

(4) It shall be unlawful for a person to secure or attempt to secure a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats or intimidation, through the commission of, or threat to commit, any act prohibited by the penal laws of this State or the Consumer Credit Code of this State.

(5) A person who violates Subsection (1), (3), or (4) of this Section shall be guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than two (2) years nor more than five (5) years or by a fine of not more than \$10,000.00 or by both.

(6) Any person required to be licensed by this Article may make an extension of credit to a lessee or a bailee of a music or skill or pleasure coin-operated machine for business or commercial purposes when the following terms and conditions have been

met and the following duties and obligations satisfactorily assumed and discharged.

(a) Before making the first such extension of credit, the licensee under this Article shall first notify the Comptroller and the Consumer Credit Commissioner of the State of Texas of the intent of such licensee to make extensions of credit in the conduct of the licensee's business.

(b) The consideration for such extensions of credit shall not exceed interest or its equivalent at the rate of one and one-half percent (1½%) per month, computed according to the United States Rule. Consideration excludes court costs and attorney's fees as determined by the court, but includes the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing an extension of credit or forbearance of money, credit, goods, or things in action, or any other service rendered. If in any transaction any consideration in excess of that provided above is charged or received by the licensee directly, or indirectly, except as the result of an accidental and bona fide error corrected upon discovery, the unpaid balance of the indebtedness created by such transaction shall be void, and that portion of any indebtedness so created which has been paid to the licensee, either the principal or its equivalent or interest or its equivalent, or both, shall be repaid by the licensee to the person.

(c) No extension of credit may be made by any person required to be licensed by this Article unless it is evidenced by a written agreement signed by the parties thereto specifying both the amount of credit extended, the consideration for such extension of credit, and the terms according to which such extension of credit is to be repaid.

(d) Each licensee making extensions of credit authorized by this Section shall keep in this State books and records, which shall be consistent with accepted accounting practices, relating to all such extensions of credit authorized by this Section sufficient to enable any competent person to determine whether or not such licensee is complying with this Section. Such records shall be preserved for four (4) years from the date of the transaction to which they relate, or two (2) years from the date of the final entry made with regard to such transaction, whichever is later.

(e) At such times as the Consumer Credit Commissioner may deem necessary, or at the request of the Comptroller or the Attorney General, the Consumer Credit Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee hereunder, and may inquire into and

examine the transactions, books, accounts, papers, correspondence, or records of such licensee insofar as they pertain to the extensions of credit regulated by this Section. In the course of such examinations, the Consumer Credit Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Consumer Credit Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Section to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Consumer Credit Commissioner or his duly authorized representative examine or make copies of such books or other relative documents shall thereby be deemed in violation of this Section. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect costs of such examination, including a proportionate share of general administrative expenses, which amount shall be retained and held by the Consumer Credit Commissioner, and no part of such fee shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Consumer Credit Commissioner in conducting such examinations shall be paid only from such fees, and no such expense shall ever be charged against the funds of this State.

(f) The Consumer Credit Commissioner may make regulations necessary for the enforcement of this Section and consistent with all its provisions. Before making a regulation the Consumer Credit Commissioner shall give each licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no regulation shall become effective until the expiration of at least twenty (20) days after such mailing. On the application of any person and payment of the cost thereof, the Consumer Credit Commissioner shall furnish

such person a certified copy of any such regulation.

(7) Any person required to be licensed by this Article who co-signs, guarantees, or becomes surety for an extension of credit or loan of anything of value to any person engaged in selling or serving alcoholic beverages for on-premises consumption, or to any person who he has reason to believe is about to be engaged in selling or serving alcoholic beverages for on-premises consumption, shall file with the Comptroller and the Consumer Credit Commissioner, a copy of all documents related to the transaction.

(8) Any person who violates Subsection (5), (6), or (7) of this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200.00 nor more than \$1,000.00.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., p. 1606, ch. 497, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 9, § 1, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1943, ch. 587, § 5, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1944, ch. 587, § 6, eff. Aug. 30, 1971.]

## CHAPTER 14. INHERITANCE TAX AND FEDERAL ESTATE TAX CREDIT

### Article

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### Art. 14.00A. Definitions

The following words when used in this Chapter, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Section.

(a) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(b) "Date of Death" means the actual date of death except in the case of a presumed decedent, when it means the date on which the court enters its final decree establishing the fact of death, regardless of the date which is found by such decree to be the presumed date of the absentee's death.

(c) "Market Value" means the price property will bring when offered for sale by one who desires to sell but is not obligated to sell and is bought by one who desires to buy but is under no necessity of buying.

(d) "Person" includes natural persons and corporations.

(e) "Personal Representative" or "Representative" includes executor, independent executor, administrator, temporary administrator, and trustee together with their successors or any other person administering or handling the affairs of a decedent's estate.

(f) "Property" shall include real or personal property, corporeal or incorporeal property, and any interest therein, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether such property is located within or without this State.

(g) "Revenue Act of 1926" includes amendments and revisions thereto.

(h) "State" means any state, territory, or possession of the United States and the District of Columbia.

(i) "Territories" include the District of Columbia and possessions of the United States.

(j) "Will" includes codicil; it also includes a testamentary instrument which merely appoints an executor and a testamentary instrument which merely revokes another will.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 2, eff. July 1, 1965.]

## I. BASIC INHERITANCE TAX

### Art. 14.01. Property Subject

(A) All property within the jurisdiction of this State, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether such property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall, upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund, in accordance with the following classification, including:

(1) Property passing under a general power of appointment exercised by the decedent by will.

(2) The proceeds of life insurance to the extent of the amount receivable by the executor or administrator as insurance under policies taken out by the decedent upon his own life, and to the extent of the excess over Forty Thousand (\$40,000) Dollars of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(B) Any transfer made by a grantor, vendor, or donor, whether by deed, grant, sale, or gift, shall, unless shown to the contrary, be deemed to have been made in contemplation of death and subject to the same tax as herein provided, if such transfer is made within three (3) years prior to the death of the grantor, vendor, or donor, of a material part of his estate, or if the transfer made within such period is in the nature of a final distribution of property and without adequate valuable consideration.

(C) The tax imposed by this Chapter in respect to personal property of nonresidents (other than tangible property having an actual situs in this State) shall not be payable:

(1) if the grantor/or donor at the time of his death was a resident of a state or territory of the United States which, at the time of his death, did not impose a transfer or inheritance tax of any character in respect of personal property of residents of this State (other than tangible personal property having an actual situs in said State); or,

(2) if the laws of the State or territory of the residence of the grantor or donor at the time of his death, contained a reciprocal provision under which nonresidents were exempted from transfer or inheritance taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the State or territory of residence of such nonresidents allowed a similar exemption to residents of the State or territory of residence of such a grantor or donor. For the purpose of this Chapter the District of Columbia and possessions of the United States shall be considered territories of the United States.

(D) The provisions of this Chapter shall not apply to residents of those states which have no inheritance tax law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1971, 62nd Leg., p. 2943, ch. 974, § 1, eff. Aug. 30, 1971.]

The 1971 amendatory act, which by sections 1 to 7 amended this article and various other articles of this chapter, provided in section 8: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

### Art. 14.011. Joint Tenancies

(1) Property held in joint tenancy with a right of survivorship in the tenants is subject to the tax imposed by this Chapter on the death of a tenant to the extent of the value of the tenancy:

(A) contributed to the tenancy by the decedent, less any consideration from the other

tenants received by, or accruing to the benefit of, the decedent; and

(B) received by the tenancy by gift from a person other than a tenant and attributable to the decedent.

(2) The value of a joint tenancy received by gift from a person other than a tenant is attributable to the tenant for whom the gift was intended by the donor at the time of the gift, or if there is no evidence of the intent of the donor, it is presumed that the gift was to all tenants equally.

(3) In the absence of evidence to the contrary, it is presumed that each tenant contributed to the joint tenancy equally.

[Acts 1971, 62nd Leg., p. 947, ch. 158, § 1, eff. May 11, 1971.]

#### Art. 14.015. Exempt Transfers

The inheritance tax imposed by Article 14.01 shall not apply to the following transfers of property:

(1) Exemption for Non-Residents. Money on deposit in any bank doing business in Texas or to shares or share accounts in any savings and loan association doing business in Texas owned by non-residents of Texas who are citizens of a foreign country and who are not engaged in business in Texas, or owned by non-resident citizens of the United States who reside in a foreign country and who are not engaged in business in Texas.

(2) Religious, Charitable and Educational Organizations. Property passing to or for the use of charitable, educational, or religious societies or institutions, incorporated, unincorporated, or in the form of a trust, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

For the purposes of this Subsection, a religious, educational, or charitable organization shall include, but not be limited to, a program of physical fitness, character development, and citizenship training or like program.

(3) Public Use. Property transferred to or for the use of this state or any town therein for public purposes.

(4) The value of an annuity or other payment received by any beneficiary (other than a personal representative of the decedent) which qualifies for exemption from the Federal Estate Tax under Subsection (c) of Section 2039 of the Internal Revenue Code of 1954, as now or hereafter amended, said Subsection (c) being codified as 26 United States Code Annotated § 2039(c).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 4, eff. July 1, 1965; Acts 1967, 60th Leg., p. 1769, ch. 671, § 1, emerg. eff. June 17, 1967.]

#### Art. 14.02. Class A

If passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or

any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son, the tax shall be one (1) per cent on any value in excess of Twenty-five Thousand Dollars (\$25,000) and not exceeding Fifty Thousand Dollars (\$50,000); two (2) per cent on any value in excess of Fifty Thousand Dollars (\$50,000), and not exceeding One Hundred Thousand Dollars (\$100,000); three (3) per cent on any value in excess of One Hundred Thousand Dollars (\$100,000), and not exceeding Two Hundred Thousand Dollars (\$200,000); four (4) per cent on any value in excess of Two Hundred Thousand Dollars (\$200,000), and not exceeding Five Hundred Thousand Dollars (\$500,000); five (5) per cent on any value in excess of Five Hundred Thousand Dollars (\$500,000), and not exceeding One Million Dollars (\$1,000,000); and six (6) per cent on any value in excess of One Million Dollars (\$1,000,000).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 14.03. Class B

If passing to or for the use of the United States, to be used in this State, the tax shall be one per cent of any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; two per cent on any value in excess of Fifty Thousand Dollars and not exceeding One Hundred Thousand Dollars; three per cent on any value in excess of One Hundred Thousand Dollars and not exceeding Two Hundred Thousand Dollars; four per cent on any value in excess of Two Hundred Thousand Dollars, and not exceeding Five Hundred Thousand Dollars; five per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding One Million Dollars; and six per cent on any value in excess of One Million Dollars.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 14.04. Class C

If passing to or for the use of a brother or sister, or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of Ten Thousand Dollars and not exceeding Twenty-five Thousand; four per cent on any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; five per cent on any value in excess of Fifty Thousand Dollars, and not exceeding One Hundred Thousand Dollars; six per cent on any value in excess of One Hundred Thousand Dollars and not exceeding Two Hundred and Fifty Thousand Dollars; seven per cent on any value in excess of Two Hundred and Fifty Thousand Dollars and not exceeding Five Hundred Thousand Dollars; eight per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding Seven Hundred and Fifty Thousand Dollars; nine per cent on any value in excess of Seven Hundred and Fifty Thousand Dollars, and not ex-

ceeding One Million Dollars; and ten per cent on any value in excess of One Million Dollars. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 14.05. Class D**

If passing to or for the use of an uncle or aunt, or a direct lineal descendant of an uncle or aunt of the decedent, the tax shall be four per cent on any value in excess of One Thousand Dollars, and not exceeding Ten Thousand Dollars; five per cent on any value in excess of Ten Thousand Dollars, and not exceeding Twenty-five Thousand Dollars; six per cent on any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; seven per cent on any value in excess of Fifty Thousand Dollars, and not exceeding One Hundred Thousand Dollars; ten per cent on any value in excess of One Hundred Thousand Dollars, and not exceeding Five Hundred Thousand Dollars; twelve per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding One Million Dollars; and fifteen per cent on any value in excess of One Million Dollars.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 14.06. Class E—Other Bequests**

If passing to any other person, organization, or institution not included in any of the classes mentioned in the preceding Articles or unless specifically exempted, the tax shall be:

- 5% on any value in excess of \$500 and not exceeding \$10,000
- 6% on any value in excess of \$10,000 and not exceeding \$25,000
- 8% on any value in excess of \$25,000 and not exceeding \$50,000
- 10% on any value in excess of \$50,000 and not exceeding \$100,000
- 12% on any value in excess of \$100,000 and not exceeding \$500,000
- 15% on any value in excess of \$500,000 and not exceeding \$1,000,000
- 20% on any value in excess of \$1,000,000.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1963, 58th Leg., p. 130, ch. 77, § 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 5, eff. July 1, 1965.]

**Art. 14.07. Tax Imposed if Share Partly in Texas**

(1) Non-resident Decedent. The inheritance tax imposed upon every beneficiary's share of the estate of a non-resident decedent shall be a tax which, in amount, bears the same ratio to the entire tax for which the beneficiary's interest would be liable if the entire estate were situated in Texas, as the total value of the beneficiary's share of the decedent's estate which is situated in Texas, before allowable beneficiary deductions are made, bears to the total value of the beneficiary's entire share in the estate of the non-resident decedent wherever situated, before allowable beneficiary deductions are made.

(2) Resident Decedent. In the event a resident of this State dies, leaving any estate subject to an inheritance tax, situated partly within and partly without this State, the inheritance tax imposed upon the share of any beneficiary of said estate situated in Texas shall be a tax which shall bear the same ratio to the amount such tax would be if his entire share and interest were situated in Texas, before allowable beneficiary deductions, bears to the total value of such beneficiary's share in such decedent's estate, wherever situated, before allowable beneficiary deductions are made.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 6, eff. July 1, 1965.]

**Art. 14.08. Divided Estate**

If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by their present value. The Comptroller shall adopt by regulation an actuarial table for calculating the present value.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1971, 62nd Leg., p. 2944, ch. 974, § 2, eff. Aug. 30, 1971.]

**Art. 14.09. Bequests to Trustees (Or Executors)**

If a testator bequeaths or devises to his executor or trustee, property in lieu of commission, the value of such property in excess of reasonable compensation, as determined by the county judge and the Comptroller, shall be subject to taxation under this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 14.10. Deductions**

The only deductions permissible under this law are the debts due by the estate, funeral expenses, expenses incident to the last illness of the deceased, which shall be due and unpaid at the time of death, all Federal, State, County, and Municipal taxes due at the time of the death of the decedent, attorney's fees and Court costs accruing in connection with the assessing and collecting of the taxes provided for under this Chapter, and an amount equal to a percentage of the value of any property forming a part of the gross estate situated in the United States received from any person who dies within ten (10) years prior to the death of the decedent, according to the following schedule:

Time Interval Between the Dates of Death of Present and Prior Decedents	Percentage of the Value of Property Received from a Prior Decedent Allowable as a Deduction from the Gross Estate
Within one year	100%
Within two years	90%
Within three years	80%
Within four years	70%
Within five years	60%

Time Interval Between the Dates of Death of Present and Prior Decedents

Percentage of the Value of Property Received from a Prior Decedent Allowable as a Deduction from the Gross Estate

Within six years	50%
Within seven years	40%
Within eight years	30%
Within nine years	20%
Within ten years	10%
After ten years	no deduction

This deduction, however, is to be only in the amount of a percentage of the value of the property upon which an inheritance tax was actually paid and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. A full statement of facts authorizing deductions must be made in duplicate under oath by the executor, administrator, or trustee, and one copy filed with the county clerk and the other with the Comptroller, before any deductions will be allowed.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1971, 62nd Leg., p. 2945, ch. 974, § 3, eff. Aug. 30, 1971.]

#### Art. 14.11. Value of Property Transferred

(A) The inheritance tax imposed by Article 14.01 shall be imposed upon the actual market value of taxable property transferred, if it has a market value, and in case it has none, then its real value. Any bonds of the United States, saving notes or other obligations which, upon the death of the decedent, constitute a part of his estate, and which may be and are received, by the United States at par and accrued interest, in payment of any estate or inheritance taxes or any other tax liability imposed by the United States shall for Texas inheritance tax purposes be valued in such estate at the amount for which same are used in payment of any such Federal tax liability.

(B) Date of Valuation. Property shall be valued at the time of the death of the decedent, provided that if the personal representative so elects, property may be valued as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within six (6) months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within six (6) months after the decedent's death, such property shall be valued as of the date six (6) months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(C) Determining Value. (1) If the Comptroller shall deem the value of any property reported by the personal representative to be incorrect, he may ap-

praise the property or have it appraised to determine the correct value.

(2) The Comptroller may take into consideration the Federal valuation of any property for Federal estate tax purposes and may value or revalue any or all property in an estate for a determination of the tax levied by this Chapter.

(3) The personal representative, a beneficiary, or any other interested person may petition the Comptroller for a redetermination of the value of any or all property.

(4) If the interested person is dissatisfied with the value set by the Comptroller after a redetermination hearing, said party shall have the right to appeal the same to the District Court of the county wherein the administration of the estate is being held, or if there is no administration, or if it be a non-resident estate, then in the county wherein the principal part of the estate is located, within twenty (20) days by giving notice of appeal. The District Court shall hear and try the same de novo, and enter its judgment on the matter in controversy accordingly.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965; Acts 1971, 62nd Leg., p. 2945, ch. 974, § 4, eff. Aug. 30, 1971.]

## II. ADDITIONAL INHERITANCE TAX—FEDERAL ESTATE TAX CREDIT

### Art. 14.12. Additional Inheritance and Transfer Tax

(A) Impose Additional Tax. In addition to the inheritance tax already levied by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Act shall take effect, and whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereinafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate shall be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty per cent (80%) of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

(B) When No Tax Due. In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty per cent (80%) of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against said estate or property belonging thereto and situated within the State of Texas, then no additional taxes shall be collected hereunder, it being the purpose and intention of this Article to

collect only a sufficient additional tax when necessary, for the State to get the full benefit of the eighty per cent (80%) credit to the States provided for by Section 301, Chapter 27, of the Federal Revenue Act of 1926.

(C) Tax on Estate Subject to Federal Tax But on Which No State Tax Is Due. Where no inheritance tax is imposed on an estate, which is situated in this State, under the laws of this State, by reason of its value not exceeding in value the amount of exemptions, and an estate tax is imposed on such estate by the Federal Government, then there shall be, and is hereby levied and shall be collected from such estate, an inheritance or transfer tax sufficient in amount to equal eighty per cent (80%) of said tax imposed by the Federal Government under the Revenue Act of 1926, on that portion of said estate which is situated in the State of Texas.

In computing and determining the rate of the tax in such cases named in this Section, the State Comptroller shall compute the same upon the net valuations of said estate as determined and used by the United States in computing the amount of the Federal Government tax due upon said estate, and said tax shall be paid from the whole of such estate before partition and distribution among the joint or several owners of same.

(D) Computation of Tax. In determining what is eighty per cent (80%) of the United States estate tax mentioned in the preceding Sections, the same shall be computed as eighty per cent (80%) of such taxes actually assessed and determined by the Federal Government under the Revenue Act of 1926, against every estate situated wholly in this State, or in case an estate is situated partly in this State and partly outside of this State, then such eighty per cent (80%) shall be computed as eighty per cent (80%) of the total amount of the Federal taxes finally determined and assessed by the Federal Government under the Revenue Act of 1926, on and against that part of the estate situated in the State of Texas, and said amount of Federal tax shall be determined by multiplying the total Federal estate tax on the entire estate by a percentage which shall be the same percentage as the percentage of the net estate located in Texas is to the total net estate of the decedent, wherever located, before deducting specific exemptions.

(E) Act Not to Increase Combined Tax Due to State and Federal Government. This Article shall always be construed so as not to increase the total amount of taxes payable to the State and the Federal Government combined upon the estates of decedents, the only purpose of said additional tax being to take full advantage of the eighty per cent (80%) credit allowed by the Federal Revenue Act of 1926, to those who have paid any estate, inheritance, legacy, or succession tax to any state or territory, or the District of Columbia, in respect to any property included in the decedent's gross estate.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965.]

### III. ADMINISTRATION

#### Art. 14.13. Powers and Duties of Comptroller

(A) The State Comptroller of Public Accounts is hereby charged with the duty of administering and enforcing this Chapter and of collecting all revenues levied by this Chapter. The Comptroller shall promulgate and publish rules and regulations not inconsistent with this Chapter, or the laws or Constitution of this State, for the enforcement of this Chapter and the collection of the revenues levied thereunder.

(B) The Comptroller is authorized to examine any books, records, documents, or property that might be necessary for the proper enforcement of this Chapter. The Comptroller may bring suit in the name of the State of Texas through the Attorney General for the collection of any revenue levied by this Chapter or for the execution of the lien for such revenues. The Comptroller shall prescribe forms requiring whatever information he deems necessary and shall furnish all forms necessary in making the reports and collecting the tax provided for by this Chapter.

(C) Exchange Information. The State Comptroller is authorized and directed to confer with the Internal Revenue Service of the United States to ascertain the value of estates in Texas which have been assessed or valued for taxes by the Federal Government, and he shall cooperate with and may enter into an exchange of information agreement with the Internal Revenue Service, furnishing to said Service all available information concerning estates of decedents in Texas which said Service may request.

(D) Compromise Agreement. When the Comptroller claims that a decedent was domiciled in this State at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Comptroller may with the approval of the Attorney General, make a written agreement of compromise with the other taxing authorities and the personal representative of the estate that a certain sum shall be accepted in full satisfaction of any and all death taxes imposed by this State, including any interest or penalties to the date of filing the agreement. The agreement shall also fix the amounts to be accepted by the other states in full satisfaction of death taxes.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965.]

#### Art. 14.14. Returns and Reports

(A) Repealed by Acts 1971, 62nd Leg., p. 2947, ch. 974, § 9, eff. Aug. 30, 1971.

(B) Inventory and Appraisal. Within twenty (20) days after an inventory and appraisal and a list of claims shall have been filed and approved by the County or Probate Court, in the estate of a decedent, it shall be the duty of the Clerk of said Court to furnish the Comptroller a certified copy of the inventory and appraisal and list of claims and a certified copy of the last will and testament

or, in the absence of a will, proof of heirship. Said Clerk shall also give the Comptroller any other information which that official may call for in reference to any such estate, such information shall be furnished within ten (10) days after being called for. The Clerk shall be entitled to a fee of One Dollar (\$1) for making the reports herein required on each such estate, which shall be taxed against said estate as Court costs, and be accounted for as fees of office.

(C) Final Return. A final tax return must be filed within nine (9) months of the date of death of the decedent giving such information as the Comptroller deems necessary for the enforcement of this Chapter, unless the Comptroller has determined on the basis of the preliminary report that no tax is due. If complete information is not available at the time the final return is due, the Comptroller shall provide for an additional period of time for the filing of a supplementary report.

(D) Report of Determination of Federal Tax. Within thirty (30) days after receiving notice or information of the final assessment and determination of the value of the estate assessed and determined by the Federal Government for the purpose of fixing Federal estate taxes thereon, the personal representative shall make to the Comptroller a report of the value of said estate as so fixed and determined. Said report shall be made in such form and contain such information as the Comptroller directs.

(E) Failure to File Reports—Civil Penalty. A penalty of Ten Dollars (\$10) shall be assessed for failure to file any report or return required by this Article within the period provided.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965; Acts 1967, 60th Leg., p. 421, ch. 187, § 1, emerg. eff. May 15, 1967; Acts 1971, 62nd Leg., p. 2946, ch. 974, § 5, eff. Aug. 30, 1971.]

#### Art. 14.15. Criminal Penalties

(A) The fines imposed by this Article shall be collected by the County Attorney, or District Attorney, in the name of this State by suit in the county in which the administration is pending, or if there be no administration, or if it be a non-resident estate, then in the county wherein the principal part of the estate is located.

(B) Any administrator, executor, or trustee of the estate of a decedent leaving property subject to taxation under the statutes relating to inheritance taxes who fails or refuses to file within the time prescribed by law a report with the Comptroller giving the information required by law as to such estate, shall be guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

(C) If any County or Probate Clerk shall fail or refuse to file within the time prescribed by the inheritance tax law a report with the Comptroller giving the information concerning property subject

to taxation under the statutes relating to inheritance taxes, he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than Fifty Dollars (\$50) nor more than Two Hundred and Fifty Dollars (\$250).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965.]

#### Art. 14.16. Payment of the Tax

(A) Date Due. The inheritance taxes levied by this Chapter shall be due and payable nine (9) months after the date of death of the decedent, unless such date for the filing of the return and the payment of the tax shall be extended by the Comptroller upon the showing that the payment thereof will result in undue hardship to the beneficiaries of the estate, in which event the inheritance taxes levied by this Chapter shall be due and payable on the date specified by the Comptroller in granting any request for extension.

(B) Extension of Time. In case of a redetermination hearing or litigation which affects the amount of tax due, the Comptroller shall extend the date for payment of the amount of tax under question for a period not to exceed thirty (30) days from the date of termination of said hearing or litigation.

(C) Payment. All taxes received and/or due under this Chapter by any personal representative shall be paid by him to the Treasurer of the State of Texas through the Comptroller. Upon receipt of such payment, the Comptroller shall issue proper receipt therefor, and shall deliver one to the party making payment or to his attorney of record. All taxes, penalties, and interest imposed by this Chapter shall be deposited to the General Revenue Fund.

(D) Partial Payment. Nothing in this Chapter shall prevent any part-owner or coparcener of property, against which taxes have been assessed under the provisions of this Chapter, from paying his pro rata of such taxes and thus relieving his property from any lien, interest, or penalties after such payment.

(E) Refunds. When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due on account of a mistake of fact or law, the State Comptroller may refund such overpayment by warrant on the State Treasury from any funds appropriated for such purpose.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965; Acts 1971, 62nd Leg., p. 2946, ch. 974, § 6, eff. Aug. 30, 1971.]

#### Art. 14.17. Penalty and Interest for Late Payment

If any tax imposed by the Chapter is not paid on or before the due date, a penalty of five percent (5%) of the tax due shall become due and payable, and if any tax is not paid within thirty (30) days of the due date, an additional penalty of five percent (5%) of the tax shall become due and payable, unless in each instance it is shown that the failure is due to reasonable cause and not due to willful neglect. Interest

at the rate of six percent (6%) per annum on any tax due shall be added to any tax and penalties imposed by this Chapter that are not paid within nine (9) months from the date of death of the decedent, unless the computed interest would be less than Five Dollars (\$5).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965; Acts 1971, 62nd Leg., p. 2947, ch. 974, § 7, eff. Aug. 30, 1971.]

#### Art. 14.18. Lien

(A) To secure the payment of all taxes, penalties, interest, and costs levied by this Chapter, there shall be a lien upon the entire estate of the deceased and collectible out of said entire estate, or any part thereof, regardless of exemptions and deductions, in force from and attach as of the date of death of the decedent until released by the Comptroller.

(B) Exemption. The lien provided by this Article shall not attach to the stock of goods of a business firm, but shall attach to the proceeds from the sale of such goods. "Stock of Goods" includes such tangible personal property as is normally sold in the operation of the business.

(C) Notice. All persons acquiring any portion of an estate subject to taxation under this Chapter shall be personally liable for the tax imposed by this Chapter and be charged with notice of the existence of all such unpaid taxes, penalties, interest, and costs, and of the lien securing their payment.

(D) Enforcement. The lien provided by this Article may be enforced in any suit brought for the collection of said taxes, penalties, interest, and costs or otherwise enforced under the laws of this state. The lien provided for by this Article shall remain in force on any property of the estate whether or not any probate proceedings are filed on the estate. Said lien shall remain in force only for five (5) years after the date of the death of the decedent, unless sooner released by the Comptroller or unless a suit for the collection of any tax due and to enforce said lien is filed before the expiration of said five (5) year period; provided, a suit for the collection of taxes without the foreclosure of said lien may be filed within ten (10) years from said death and the collection of said taxes, except where suit has been filed for same as herein provided, after said ten (10) year period is forever barred; provided, the provisions of this Section (D) pertaining to the duration of the lien for five (5) years and the ten (10) year bar of the collection of taxes shall have no force or effect unless the reports required by Article 14.14 of this Chapter are filed as provided in said Article.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965; Acts 1967, 60th Leg., p. 421, ch. 187, § 2, emerg. eff. May 15, 1967.]

#### Art. 14.19. Release of Lien

(A) Tax Paid. When all known taxes, penalties, interest and costs have been paid, the Comptroller shall notify the County Clerk that the tax lien upon property listed on the inventory and appraisal is released.

If any part-owner or coparcener of property shall pay his pro rata share of taxes as provided in Article 14.16(D), the Comptroller shall release the tax lien for such property or share of property.

(B) Before Tax Paid. Subject to such rules and regulations as the Comptroller may prescribe, the Comptroller may authorize the transfer of property and the release of the tax lien on specific properties before the taxes imposed by this Chapter are fully paid provided that:

(1) Such sale or transfer is necessary to pay the tax imposed by this Chapter or the Federal estate tax or such sale or transfer is necessary to preserve the estate; and

(2) Such sale or transfer is made for adequate and full consideration; and

(3) The remaining property of the estate is sufficient to assure payment of the taxes levied by this Chapter and any prior claims or liens or sufficient surety is made to guarantee payment.

The lien for taxes, penalties, or interest shall attach to the proceeds of any sale or exchange authorized by this Article.

(C) The tax lien shall not attach to stock in a corporation incorporated and existing under the laws of the State of Texas that is owned by a non-resident decedent or his estate, and such stock may be transferred without obtaining the authorization for transfer and release of lien that are provided for by Subdivision (B) of this Article.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965, Acts 1967, 60th Leg., p. 1768, ch. 670, § 1, eff. June 17, 1967.]

#### Art. 14.20. Liability for Tax

(A) Liability for Unauthorized Transfer. Should any domestic corporation or association transfer to any legatee or heir, or should an administrator, executor or trustee deliver to any legatee or heir, the stocks or bonds of any domestic corporation or association, or deliver any other property, before the inheritance tax thereon due this State is paid or a release of the tax lien is secured from the Comptroller, the corporation or association, or the administrator, executor, trustee and their bondsmen shall be liable for said tax, penalty, interest, and all cost of collection.

(B) Approval of Final Account. No final account of any executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid. If no inheritance tax is due, such fact must be shown by an instrument in writing approved by the State Comptroller of Public Accounts, and filed with the final papers closing the estate.

(C) Release of Personal Liability. If the personal representative of an estate makes written applica-

tion to the Comptroller for determination of the amount of the tax and discharge from personal liability thereof, the Comptroller (as soon as possible, and in any event within one (1) year after the making of such application, or, if the application is made before the return is filed, then within one (1) year after all returns required by this Chapter have been filed), shall notify the personal representative of the estate of the amount of taxes, interest, and penalties, if any. Upon payment of the amount determined by the Comptroller, the personal representative shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt in writing showing such discharge.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965.]

**Art. 14.21. Safe Deposits, Etc.—Delivery to Executor, Etc.—Notice to Comptroller**

No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or under control securities, deposits, or other assets belonging to a decedent, who was a resident or non-resident, or belonging to such a decedent and one or more persons, shall deliver the same to the executors, administrators, heirs, or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more other persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the Comptroller at least ten (10) days prior to said delivery or transfer, and delivery to be made only in the presence of the Comptroller or his duly authorized agent, who may be the County Judge of the county in which said transfer transpires, unless the Comptroller, in writing, consents to the transfer without his presence. And it shall be lawful for the said Comptroller, or his representative, to examine all of said securities, deposits, or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax or interest due or thereafter to become due upon said securities, deposits, or other assets delivered or transferred, and in addition thereto, a penalty of not less than One Thousand Dollars (\$1,000) or more than Five Thousand Dollars (\$5,000); and the payment of such tax and interest thereon, or the penalty above-described, or both, may be enforced in an action brought by the Comptroller in any court of competent jurisdiction.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965.]

**Art. 14.22. County Judge—Order to Safe Deposit Company, Etc., to Turn Over Property**

When it is made to appear to a County Judge in this state that a safe deposit company, trust compa-

ny, bank, person, or corporation has in its possession or under its control, papers of a decedent of whose estate such court has jurisdiction, or that the decedent has leased from such a corporation a safe deposit box, and that such papers or such deposit box may contain a will of the decedent, or a deed to a burial plot in which the decedent is to be interred, or a policy of insurance issued in the name of the decedent and payable to a named beneficiary, he may make an order directing such deposit company, trust company, bank, person or corporation to permit a person named in the order to examine such papers or safe deposit box in the presence of himself, or his duly authorized representative, or a representative of the Comptroller, and an officer of such safe deposit company, trust company, bank or corporation, or agent of such person, and if such documents are found among such papers, or in such box, to deliver said will to the clerk of the probate court of such county, or said deed to such persons as may be designated in such order, or said policy of insurance to the beneficiary named therein. The clerk of said court shall furnish a receipt upon the delivery of the will to him.

If no court order has been served upon the safe deposit company, bank, person or corporation, said lessors of safe deposit boxes may permit the spouse, a parent, an adult descendant or a person named as executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box or boxes leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the safe deposit company, trust company, bank, person or corporation; and if so requested by such person, and after obtaining his signed receipt, therefor, may deliver:

(1) Any writing purporting to be a will of the decedent to the person named as executor or co-executor thereof or to the county probate clerk of the county where the decedent resided. The lessor shall retain a copy of any will so delivered for a period of four years from the date of its delivery.

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search.

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary or any co-beneficiary named therein.

But no other contents shall be removed except in the manner as may be otherwise now or hereafter provided by law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1965, 59th Leg., p. 830, ch. 402, § 7, eff. July 1, 1965; Acts 1969, 61st Leg., p. 2006, ch. 685, § 1, eff. Sept. 1, 1969.]

**Arts. 14.23 to 14.28. Repealed by Acts 1965, 59th Leg., p. 830, ch. 402, § 11, eff. July 1, 1965**

**CHAPTER 15. ADDITIONAL INHERITANCE TAX [Repealed]**

**Arts. 15.01 to 15.16. Repealed by Acts 1965, 59th Leg., p. 830, ch. 402, § 11, eff. July 1, 1965**

**CHAPTER 16. STOCK TRANSFER TAX [Repealed]**

**Arts. 16.01 to 16.10. Repealed by Acts 1967, 60th Leg., p. 1157, ch. 513, § 1, eff. Sept. 1, 1967**

**CHAPTER 17. STORES AND MERCANTILE ESTABLISHMENTS [Repealed]**

**Arts. 17.01 to 17.11. Repealed by Acts 1971, 62nd Leg., p. 937, ch. 148, § 2, eff. Jan. 1, 1975**

Prior to repeal, art. 17.04 was amended by Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 12; art. 17.05 was amended by Acts 1961, 57th Leg., p. 971, ch. 421, §§ 1, 2; Acts 1963, 58th Leg., p. 919, ch. 350, § 1; Acts 1971, 62nd Leg., p. 937, ch. 148, § 1; and art. 17.11 was amended by Acts 1963, 58th Leg., p. 970, ch. 393, § 1.

**CHAPTER 18. CEMENT PRODUCTION TAX**

Article

- 18.01. Tax.
- 18.02. Administration.
- 18.03. Penalties.
- 18.04. Other Taxes.

**Art. 18.01. Tax**

There is hereby imposed a tax of \$0.0275 on the one hundred (100) pounds, or fractional part thereof, of cement on every person in this State manufacturing or producing in and/or importing cement into this State, and who thereafter distributes, sells or uses the same in intrastate commerce. Said tax shall accrue on and is imposed on the first intrastate distribution, sale or use; provided, however, no tax shall be paid except on one sale, distribution or use. The person liable for said tax is hereby defined as a "distributor," and said tax is to be allocated as hereinafter provided.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 18.02. Administration**

(1) Such tax shall be due and payable at the office of the Comptroller, at Austin, on the 25th day of each succeeding month based on the business done the preceding calendar month, and on or before said date such distributor shall also make and deliver to the Comptroller a report, sworn to, showing all cement distributed, used and sold, upon which a tax accrues as well as all produced within this State and imported into or exported out of this State, and such other information as the Comptroller may require.

(2) A complete record of the business done, together with any other information the Comptroller may require, shall be kept by each distributor; which said records shall be open to the Comptroller, Attorney General, Auditor, and their representatives. The Comptroller shall adopt rules and regulations for the enforcement hereof.

(3) No person shall act as distributor in this State who shall be delinquent in the payment of said taxes, and the Attorney General may enjoin his acting as such and may enforce the provisions hereof by suit instituted in Travis County, or other county having venue.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 18.03. Penalties**

If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25), and not more than One Thousand Dollars (\$1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly he shall forfeit five per cent (5%) thereof as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 13, eff. Sept. 1, 1961.]

**Art. 18.04. Other Taxes**

No tax shall be imposed upon any interstate sale or transaction, nor upon any sale, distribution or use exempt under either the State or Federal Constitutions, and no other like occupation tax shall be imposed by any municipal corporation on cement.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**CHAPTER 19. MISCELLANEOUS OCCUPATION TAX**

Article

- 19.01. Miscellaneous Occupation Taxes.
- 19.02. Certain Services Connected with Oil Wells.
- 19.03. Penalty.
- 19.04. Permit Not Granted Until Tax Paid.

**Art. 19.01. Miscellaneous Occupation Taxes**

There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this Article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

(1) **Auctioneers.** From every auctioneer there shall be collected an annual tax of Ten Dollars (\$10). For purposes of this Article, an auctioneer shall be deemed to be one engaged in the occupation of selling the goods of another at a competitive sale.

(2) **Brokers and Factors.** From every person, acting for himself or on behalf of another, engaged in the business or occupation of a Broker or Factor, whether he is principally engaged in such business or not, there shall be collected Twelve Dollars (\$12) per year. A "broker" or "factor," for the purpose of this Subsection, is every person who, for another and for a fee, commission or other valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases or sales or

transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, coin, money, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce and merchandise of any kind; whether or not he receives and delivers possession thereof; provided that this Subsection shall not apply to a salesman who is employed on a salary or commission basis by not more than one retailer, wholesaler, jobber, or manufacturer, nor shall this Subsection apply to or be construed to include persons selling property only as receivers, trustees in bankruptcy, executors, administrators, or persons selling under the order of any court, or any person who is included within the definition of any other occupation and is paying or subject to the payment of a tax under any other Subsection of this Chapter; however, this exemption shall not apply to any individual engaged in more than one occupation as defined by the other Subsections of this Article.

(3) Repealed by Acts 1973, 63rd Leg., p. 1051, ch. 407, § 21, eff. Aug. 27, 1973.

(4) Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967.

(5), (6) Repealed by Acts 1963, 58th Leg., p. 550, ch. 205, § 30, eff. Aug. 23, 1963.

(7) **Tax on Dealers in Pistols.** There shall be collected from every person, firm or corporation engaging in the business of bartering, leasing, selling, exchanging, or otherwise dealing in pistols for profit, whether by wholesale or retail, an annual occupation tax of Ten Dollars (\$10) to be paid on or before January 1st of each year, and to be paid before continuing said business. Before engaging in said business, each such dealer shall obtain a license therefor, to be issued by the County Tax Collector of each county in which the applicant has a place of business, and for each separate place of business. The Comptroller of Public Accounts shall furnish said forms to the Tax Collectors.

(a) Counties and municipalities may levy tax. The Commissioners Courts of the several counties, as well as all municipalities, shall also have the power to levy and collect such a tax, equal to one-half (½) of the amount herein levied.

(b) Records and reports. Each dealer shall keep a record of all pistols bartered, sold, leased or otherwise disposed of for a period of ten (10) years. Such records shall show the number of the pistol, the name of the manufacturer, date of the transaction, salesman, purchaser, and their addresses, which record shall be made available and accessible to any authorized law-enforcing agency of the State of Texas or any county or city therein during normal business hours.

(c) Pistol defined. "Pistol" as used herein, shall include every kind of pistol, revolver, automatic, semi-automatic, magazine pistol, and every other short firearm intended or designed to be aimed or fired from one hand.

(d) Exceptions. No person shall be required to have the license provided for in this law or pay the tax levied herein where such person is engaged exclusively in selling pistols to the Militia of the United States or other agencies of the Federal Government authorized by law to purchase the same.

(8) Repealed by Acts 1967, 60th Leg., p. 352, ch. 169, § 1, eff. Aug. 28, 1967.

(9) **Ship Brokers.** Every person, firm, association of persons or corporation engaged in the management of business matters occurring between the owners of vessels and the shippers, or consignors of the freight which they carry shall be deemed a ship broker for the purpose of this Chapter. Every ship broker shall pay an annual tax of Twenty-five Dollars (\$25).

#### (10) Billiard Tables.

(a) From every person owning and operating for profit and every firm, association of persons, corporation and every other organization, save and except religious, charitable or educational organizations, authorized under the laws of the State of Texas, owning and operating any billiard table, by whatever name called, there shall be collected an annual tax of Five Dollars (\$5) for each billiard table.

(b) Billiard Table Defined. A billiard table is defined as any table surrounded by a ledge or cushion with or without pockets upon which balls are impelled by a stick or cue, provided, however, that any coin-operated billiard table, being a skill or pleasure coin-operated machine, shall be subject to the provisions of Chapter 13 of this Title, and taxable thereunder.

(c) Cities and Towns May Levy Tax and License Owners and Operators. All cities and towns, whether incorporated under general or special law, shall have the power and authority to levy and collect a tax, equal to one-half (½) of the amount herein levied, and may ban, prohibit, regulate, supervise, control or license, any person, firm, association of persons, corporations and all other organizations, save and except religious, charitable or educational organizations, authorized under the laws of the State of Texas, operating a billiard table within the incorporated limits of such city or town; but in the event that a fee is charged for licensing the operation of billiard tables, said fee shall not exceed Ten Dollars (\$10) annually per table; and said cities and towns may fix penalties for the violation thereof.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., p. 585, ch. 277, § 1, eff. May 29, 1961; Acts 1963, 58th Leg., p. 114, ch. 65, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 878, ch. 381, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 891, ch. 387, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 9, § 2, eff. Oct. 1, 1969; Acts 1973, 63rd Leg., p. 1051, ch. 407, § 21, eff. Aug. 27, 1973.]

**Art. 19.02. Certain Services Connected with Oil Wells**

(1) The term "person" shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, associations and corporations.

(2) An occupation tax at the rate and in the manner hereinafter provided is hereby imposed upon every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation, with the use of any tools, instruments or equipment, whether electrical or mechanical, owned, controlled, or furnished by such person, or by means of any chemical, electrical or mechanical processes when such service or duty is performed in or at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning of any such well, in

(1) cementing the casing seat of any oil or gas well, or

(2) shooting, fracturing or acidizing the sands or other formations of the earth in any such well, or

(3) surveying or testing such formations or the contents thereof, in any such well through the use of instruments or equipment at least a portion of which instruments or equipment is located within the well bore when the survey or test is made; provided, however, that nothing herein contained shall be construed or held to impose a tax upon the business of drilling or reworking any oil or gas well, or upon any service incidental thereto performed by persons engaged in such drilling or reworking business.

(3) The tax hereby imposed shall be at the rate of 2.42 per cent of the gross amount received from the services or duty specified above after deducting from such gross amount the reasonable value at the well of any material used, consumed, expended in or incorporated into the well. The amount received from such taxable services during the calendar month next preceding shall be reported by the person subject to the tax imposed hereby on a form prescribed and furnished by the Comptroller and the tax thereon shall be paid to the Comptroller at his office in Austin, Texas, on or before the twentieth day of each month.

(4) A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Article, and the collection of the tax levied herein.

(5) If any person shall violate any provisions of this Article, he shall forfeit to the State of Texas, as

a penalty, the sum of not less than Twenty-five Dollars (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax when the same shall become due, he shall forfeit five per cent (5%) thereof as a penalty, and after the first thirty (30) days, he shall forfeit an additional five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

(6) If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, Art. VII, § 14, eff. Sept. 1, 1961.]

**Art. 19.03. Penalty**

Whoever shall pursue or follow any occupation, calling or profession or do any act taxed by law, or exhibit any machine or instrument, for which a tax is required to be paid, without exhibiting and displaying the tax receipt issued to him in the manner provided in this Act shall be guilty of a misdemeanor and upon conviction, fined in any sum not exceeding Fifty Dollars (\$50).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 19.04. Permit Not Granted Until Tax Paid**

No individual, company, corporation or association, failing to pay all taxes imposed by this Chapter, shall receive a permit, when such is required, to do business in this State, or continue to do business in the State, until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax, and such receipt shall be construed as a permit to do business when a separate permit is not otherwise required by law.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**CHAPTER 20. LIMITED SALES, EXCISE AND USE TAX**

Article	
20.01.	Title—Definitions.
20.02.	Imposition of Limited Sales Tax.
20.021.	Method of Collection; Bracket System.

## Article

- 20.03. Imposition and Rate of Use Tax.
- 20.031. Administration and Enforcement of Use Tax.
- 20.04. Exemptions.
- 20.05. Return and Payments.
- 20.06. Deficiency Determination.
- 20.06½. Deleted.
- 20.07. Jeopardy Determinations.
- 20.08. Petition for Redetermination.
- 20.09. Collection of Tax.
- 20.10. Overpayments and Refunds.
- 20.11. Administration.
- 20.12. Violations.
- 20.13. Disposition of Proceeds.
- 20.14. Remedies of State are Cumulative.
- 20.15. Comptroller's Authority.
- 20.16. Res Judicata.
- 20.17. Tax Suit Comity.
- 20.18 to 20.20. Deleted.

**Art. 20.01. Title—Definitions**

This Chapter is known and may be cited as the "Limited Sales, Excise and Use Tax Act," and the following words shall have the following meanings unless a different meaning clearly appears from the context:

(A) Person. "Person" shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, cooperative, assignee, or any other group or combination acting as a unit. "Person" shall also include the United States or any agency thereof, this State, or any agency hereof, or any city, county, special district, or other political subdivision of this State to the extent engaged in the selling of items taxable under this Chapter.

(B) Comptroller. "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(C) Business. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

**(D) Receipts.**

(1) "Receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of taxable items by retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the taxable item sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the tangible personal property, and has resold the tangible personal property prior

to making any use of the tangible personal property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the tangible personal property.

(b) The cost of the materials used, labor or service costs, interest paid, losses or any other expenses.

(c) The cost of transportation of the tangible personal property prior to its sale to the purchaser.

(d) The cost of transportation incident to the performance of a taxable service.

(2) "Receipts" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit, or refunds on the sales price of taxable services.

(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of taxable items under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

(f) Charges for transportation of tangible personal property after sale.

(g) The amount charged for labor or services rendered in installing, applying, remodeling, or repairing the tangible personal property sold.

(E) In this State or Within the State. "In this State" or "Within the State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

(F) Occasional Sale. "Occasional Sale" means:

(1) One or two sales of taxable items at retail during any twelve-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling taxable items at retail.

(2) The sale of the entire operating assets of a business or of a separate division,

branch or identifiable segment of a business. For the purpose of this subsection a "separate division, branch or identifiable segment" shall be deemed to exist if prior to its sale the income and expenses attributable to such "separate division, branch or identifiable segment" could be separately ascertained from the books of account or record. The purpose of this subsection is to clarify existing law and merely expresses the original intention of the Legislature.

(3) Any transfer of all or substantially all the property held or used by a person in the course of an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this subsection, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

(G) Purchase. "Purchase" means:

(1) Any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(2) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

(4) The acceptance or utilization of any taxable service for a consideration.

(H) Rental Price or Lease Price.

(1) "Rental Price" or "Lease Price" means the total amount for which tangible personal property is rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the tangible personal property rented or leased.

(b) The cost of material used, labor or service cost, interest charged, losses, or any other expenses.

(c) The cost of transportation of the tangible personal property at any time.

(2) The total amount for which tangible personal property is rented or leased includes all of the following:

(a) Any services which are a part of the lease or rental.

(b) Any amount for which credit is given to the lessee or rentee by the lessor or renter.

(I) Retail Sale or Sale at Retail. "Retail Sale" or "Sale at Retail" means:

(1) Any sale of a taxable item.

(2) The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his receipts.

(3) The performance in this State of any taxable service.

(J) Retailer.

(1) "Retailer" includes:

(a) Every seller engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

(b) Every person making more than two (2) retail sales of tangible personal property during any twelve-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption.

(d) Every person selling taxable services.

(2) When the Comptroller determines that it is necessary for the efficient administration of this Chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Comptroller may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this Chapter.

(K) Sale.

(1) (a) "Sale" means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(b) "Sale" includes the performance of a taxable service for a consideration.

(c) "Sale" when used in connection with amusement services means the sale of admission or the right to participate, whether by means of or through the purchase of a club or other membership card, subscription, dues, season or other ticket, lease for admission, or simply by the payment of cash without the delivery or use of any receipt, ticket or other instrument or device.

(2) "Sale" includes:

(a) The producing, fabrication, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting.

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(c) The furnishing, preparing or serving for a consideration of food, meals, or drinks.

(d) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

(L) Sales Price.

(1) "Sales Price" means the total amount for which taxable items are sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the taxable items sold.

(b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.

(c) The cost of transportation of the tangible personal property prior to its sale or purchase.

(d) The cost of transportation incident to the performance of a taxable service.

(2) The total amount for which a taxable item is sold includes all of the following:

(a) Any services which are a part of the sale.

(b) Any amount for which credit is given to the purchaser by the seller.

(3) "Sales Price" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) The amount charged for tangible personal property returned by customers when

the entire amount charged therefor is refunded either in cash or credit, or refunds on the sales price of taxable services.

(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of taxable items under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of a taxable item of any kind or nature.

(f) Charges for transportation of tangible personal property after sale.

(g) The amount charged for labor or services rendered in installing, applying, remodeling, or repairing the tangible personal property sold.

(M) Seller. "Seller" includes every person engaged in the business of selling, leasing or renting taxable items of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the limited sales tax.

(N) Storage. "Storage" includes any keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this State of tangible personal property purchased from a retailer.

(O) Storage and Use Exclusion. "Storage" and "Use" do not include the keeping, retaining or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the State for use thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the State, and thereafter used solely outside the State.

(P) Tangible Personal Property. "Tangible Personal Property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(Q) Taxpayer. "Taxpayer" means any person liable for tax under this Chapter.

(R) Use. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that tangible personal property except that it does not include the sale of that tangible personal property in the regular course of business or the transfer of tangible personal property as an integral part of a taxable service rendered in the regular course

of business. "Use" specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such except as provided in Article 20.01(T)(2).

(S) Sale for Resale. "Sale for Resale" means:

(1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it within the geographical limits of the United States of America, its territories and possessions, in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property.

(2) A sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing, within the geographical limits of the United States of America, its territories and possessions, the tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

(3) A sale of tangible personal property to any purchaser who is purchasing the tangible personal property for the purpose of subsequently transferring it within the geographical limits of the United States of America, its territories and possessions, as an integral part of a taxable service.

(4) A sale of a taxable service performed on any tangible personal property that is held by the purchaser of the taxable service for resale.

(T) Contractor or Repairman. "Contractor" or "Repairman" shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property of his customer, for all of the purposes of this Chapter.

(1) The above provision shall apply only if the contract between the person performing the services and the person receiving them contains a lump sum price covering both the performance of the services and the furnishing of the necessary incidental material.

(2) If the contract between the person providing the services and the person receiving them contains separate amounts applicable to the performance of the services

and the furnishing of the material then the above Section shall not apply, and the person furnishing the materials shall be liable for the limited sales tax upon the agreed price of the materials as thus set forth in the contract. Provided, however, that the agreed price of the materials shall not be less than the actual cost of such materials to the person so providing them.

(3) In any case where the person so providing such materials had paid the limited sales tax to his supplier when purchasing the tangible personal property, he shall be entitled to credit the tax so paid to his supplier against any tax imposed by this Chapter with respect to his subsequent sale of that tangible personal property.

(4) Nothing in this Section applies to the performance of repair services taxable under this Chapter as a taxable service.

(U) Manufacturing. "Manufacturing" shall mean and include every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another.

(V) Blank.

(W) Taxable Items. "Taxable Items" means tangible personal property.

(X) Motor Vehicles. "Motor Vehicle" means every self-propelled vehicle in or by which any person or property is or may be transported upon a public highway, including trailers and semitrailers. "Motor Vehicle" does not include any device moved only by human power or used exclusively upon stationary rails or tracks and does not include farm machinery or farm trailers or road-building machinery or any self-propelled vehicle used exclusively to move farm machinery or farm trailers or road-building machinery.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1968, 60th Leg., 1st C.S., p. 9, ch. 2, § 12, eff. Oct. 1, 1968; Acts 1969, 61st Leg., p. 1522, ch. 458, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 1 to 13, 38, eff. Oct. 1, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 210, ch. 41, §§ 1, 2, eff. Oct. 1, 1969.]

#### Art. 20.02. Imposition of Limited Sales Tax

There is hereby imposed a limited sales tax at the rate of four per cent (4%) on the receipts from the sale at retail of all taxable items within this State. [Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1968, 60th Leg., 1st C.S., p. 4, ch. 2, § 4, eff. Oct. 1, 1968; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, § 14, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1194, ch. 292, art. 1, § 1, eff. July 1, 1971.]

Additional tax. Acts 1971, 62nd Leg., p. 1206, ch. 292, art. 7, § 1, provided:

"Section 1. The passage of Public Law 91-156 [12 U.S.C.A. § 548] by the Congress of the United States shall not operate to impose or permit the imposition of any additional tax or taxes upon the institutions affected thereby unless:

"(a) The tax or taxes were being imposed prior to January 1, 1971, or  
 "(b) Such institutions are specifically designated as being subject to such additional tax or taxes other than the limited sales and use tax by an Act of the Legislature passed subsequent to the effective date of Public Law 91-156."

Exemptions. Acts 1971, 62nd Leg., p. 1207, ch. 292, art. 9, §§ 1 to 3, provided:

"Section 1. (a) There are exempted from the three-fourths of one percent increase in the Limited Sales, Excise and Use Tax imposed by this Act the receipts from the sale, use, or rental, and the storage, use or consumption in this State of taxable items, if:

"(1) the items are used for the performance of a written contract entered into prior to the effective date of this Act, if the contract is not subject to change or modification by reason of the tax; or the items are used pursuant to an obligation of a bid or bids submitted prior to the effective date of this Act, if the bid or bids may not be withdrawn, modified, or changed by reason of the tax imposed by this Act; and

"(b) The exemptions provided by this section have no effect after three years following the effective date of this Act.

"Sec. 2. This Act takes effect on July 1, 1971, on the condition that it is passed by a vote of at least two-thirds of all members elected to each House as required by Section 39, Article III, Constitution of the State of Texas. Otherwise, this Act takes effect on September 1, 1971.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

### Art. 20.021. Method of Collection; Bracket System

(A) Every retailer shall add the sales tax imposed by Article 20.02 of this Chapter to his sale price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. It is further specified that where tangible personal property is segregated in contemplation of transfer of title or possession and is thereafter to be transported by common carrier from the seller to the buyer, with the price fixed F.O.B. the seller's place of business, and with transportation charges separately stated, the tax herein imposed shall be computed only upon the basis of the charge for the tangible personal property itself, exclusive of the separately stated and independently fixed transportation charges. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$ .12	No Tax
.13 to .37	\$.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04

Provided, that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four percent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax.

When several taxable items are purchased together and at the same time, the tax shall be computed on the total amount of the several items less the amount paid for any article or item of tangible personal property specifically exempt under the provisions of Article 20.04 of this Chapter.

The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such tax is prohibited.

(B) Assumption or Absorption of Tax by Retailer; Unlawful Advertising.

(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that any part of it will be refunded or that it will not be added to the selling price of the taxable items sold. Provided, however, that this Section (B) does not prohibit any utility from billing its customers in one lump sum covering the utility sales price plus the tax imposed by this Chapter.

(2) Any person violating any provision of this paragraph is guilty of a misdemeanor.

(C) Limited Sales Tax Permit Application.

(1) Every person desiring to engage in or to conduct business as a seller within this State shall file with the Comptroller an application for a permit for each place of business.

(2) Every application for a permit shall:

(a) Be made upon a form prescribed by the Comptroller.

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(c) Set forth such other information as the Comptroller may require.

(d) The application shall be signed by the owner if he is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(D) Limited Sales Permit Issuances. After compliance with Paragraphs (C) and (N) of this Article by the applicant, the Comptroller shall grant and issue to each applicant without charge a separate permit for each place of business within the State. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(E) Revocation, Suspension of Permit; Procedure.

(1) Whenever any person fails to comply with any provision of this Chapter relating to the limited sales tax or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person twenty (20) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits

should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the limited sales tax and the regulations of the Comptroller. The Comptroller may prescribe the terms under which a suspended permit may be reissued.

(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

(F) **Presumption of Taxability: Resale Certificate.** For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it in the regular course of business or for the purpose of subsequently transferring it as an integral part of a taxable service rendered in the regular course of business.

Provided, however, any purchase of beer or malt liquor by the holder of a retail license or permit issued under the provisions of the Texas Liquor Control Act from any holder of a manufacturer's license, General Class B Wholesaler's permit, Local Class B Wholesaler's permit, General, Local, Branch or City Distributor's license issued under the provisions of the Texas Liquor Control Act shall be presumed to be a purchase for resale. The holder of any such manufacturer's license, General Class B Wholesaler's permit, Local Class B Wholesaler's permit, General, Local, Branch or City Distributor's license shall not be required to secure a resale certificate covering sales to the holders of any such retail licenses or permits.

(G) **Effect of Resale Certificate.** The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting taxable items. A resale certificate may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service in the regular course of business or is unable to ascertain at the time of purchase whether the tangible person-

al property will be resold, leased, rented, or transferred in the regular course of business or will be used for some other purpose.

(H) **Form and Contents of Resale Certificate.**

(1) The certificate shall:

(a) Be signed by and bear the name and address of the purchaser.

(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business, or transferred as an integral part of a taxable service rendered in the regular course of business.

(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

(I) **Liability of Purchaser Giving Resale Certificate.** If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the tangible personal property to him shall be deemed the measure of the tax.

(J) **Improper Use of Resale Certificates.** Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business or for transfer by him as an integral part of a taxable service rendered in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

(K) **Resale Certificate; Commingled Fungible Goods.** If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of goods covered by the resale certificate until a quantity of such goods equal to the quantity of the goods so commingled has been sold.

(L) **Bad Debts.** Credit shall be allowed to the retailer for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

(M) Refunds and Allowances. Credit shall be allowed to the retailer for taxes paid on the amount of any refunds or credits allowed to a purchaser as a result of a bona fide renegotiation of a sales price. Such renegotiation shall include agreements by which the seller refunds or allows credit for any amount in satisfaction for an alleged breach of warranty with respect to taxable items previously sold by him to the person with whom said agreement is made.

(N) Bonds or Securities.

(1) Every person who holds a sales tax permit under this Chapter as of January 1, 1974, and is delinquent in the payment of any taxes, penalties and/or interest on January 1, 1974, and every applicant for a sales tax permit on or after January 1, 1974, shall furnish to the Comptroller a cash bond, a bond from a surety company chartered or authorized to do business in the State of Texas, certificates of deposits, certificates of Savings or U.S. Treasury bonds or, subject to the discretion and approval of the Comptroller, an assignment of negotiable stocks or bonds, or such other security as the Comptroller may deem sufficient to secure the payment of taxes under this Chapter. Any surety bond furnished under this Paragraph shall be a continuing instrument and shall constitute a new and separate obligation in the penal sum named therein for each calendar year or a portion thereof while such bond is in force. Such bond shall remain in effect until the surety or sureties are released and discharged. The Comptroller shall fix the amount of such bond or security in each case, taking into consideration the amount of money that has or is expected to become due from such person under this Chapter and under the Local Sales and Use Tax Act.<sup>1</sup> The amount of the bond or security required by the Comptroller shall be such as will protect the State of Texas against failure to pay the amount which may become due from such person under this Chapter and under the Local Sales and Use Tax Act, but the amount of the bond or security required by the Comptroller shall not exceed three (3) times the amount of such person's average quarterly tax liability, or Fifty Thousand Dollars (\$50,000.00), whichever is lower.

(2) No sales tax permit shall be issued by the Comptroller on or after January 1, 1974, until the applicant provides the Comptroller with a bond or security as described in Subsection 1 of this Paragraph, together with a completed sales tax permit application form. Applicants for sales tax permits on or after January 1, 1974 may be issued temporary authority for a period to be determined by the Comptroller in order to arrange for and provide the bond or security required by this section. Said temporary authority shall expire automatically without fur-

ther notice on the expiration date shown on the temporary authority.

(3) Any person holding a sales tax permit under this Chapter on January 1, 1974 and who is not delinquent as that term is defined below shall not be required to furnish the bond or security described in Subsection 1 of this Paragraph.

The exemption shall continue for each such taxpayer until such time as he may be determined by the Comptroller to be delinquent, which term shall mean for the purposes of this section, the failure to file all reports due and/or the failure to pay any determination prior to the day such determination could be paid without additional penalty at which time as a condition precedent to being allowed to continue to engage in the business of selling taxable items at retail, such taxpayer shall be required to post the bond or security described in Subsection 1 of this Paragraph with the Comptroller. After such determination, the Comptroller shall notify such person by mail that he must furnish a bond or security and in such notice, shall state the amount of the bond or security required to be filed. Such notice shall be addressed to such person's address as shall be shown in the records of the Comptroller.

(4) Every person who holds a sales tax permit under this Chapter as of January 1, 1974, and is delinquent shall file with the Comptroller a bond or security as described in Subsection 1. The Comptroller shall notify such person by mail that he must file a bond or security within 30 days of the date of the notice. The notice shall state the amount of the bond or security required by the Comptroller and shall be addressed to such person's address as shown in the records of the Comptroller.

(5) Upon determination of the Comptroller of the continuous compliance with the condition of the bond or security under the provisions of the Chapter for a period of two (2) consecutive years from January 1, 1974, or from the date of the issuance of his permit, a person shall be exempt from the bonding or security requirements of Subsection 1 and the Comptroller shall return, refund or release all security held under the Act upon written request of same.

This exemption shall continue for each such taxpayer until such time as he may be determined by the Comptroller to be delinquent which term shall mean for the purposes of this section the failure to file all reports due and/or the failure to pay any determination prior to the day such determination could be paid without additional penalty at which time as a condition precedent to being allowed to continue to engage in the business of selling taxable items at retail, such taxpayer shall be required to post the bond or security described in Subsection 1 of this Paragraph with the Comptroller. After

such determination, the Comptroller shall notify such person by mail that he must furnish a bond or security and in such notice, shall state the amount of the bond to be filed. Such notice shall be addressed to such person's address as shall be shown in the records of the Comptroller.

(6) Upon the failure to pay the taxes and/or file returns required by this Chapter and/or the Local Sales and Use Tax Act by any person who has executed or provided a bond or security under the provisions of this Chapter, the Comptroller shall notify the person by the issuance of a Deficiency or Jeopardy determination of the amount of delinquent taxes, penalties and interest, containing a demand for payment therein. Such determination shall provide that if payment is not made when due, the bond or other security, or any part thereof, shall be forfeited no earlier than the day following the last day such deficiency could be paid without incurring additional penalty.

In the case of the surety bond, the Comptroller will send a copy of such Deficiency or Jeopardy Determination to each surety on the bond. The demand for payment will be addressed to both the surety or sureties and the person who owes the delinquency.

If payment is not made when due and:

(a) if the forfeiture of the bond or other security does not satisfy the delinquency, the Comptroller shall thereafter follow the provisions of Paragraph E of this Article. If the permit of such person is revoked or suspended as a result thereof:

(1) the Comptroller shall notify the applicable city of any delinquency under the Local Sales and Use Tax Act;

(2) the Comptroller shall certify the taxes, penalties and interest delinquent under Chapter 20, Title 122A, Taxation—General, V.C.S., to the Attorney General, who shall file suit against such person and/or surety or sureties to collect the amount or amounts due; provided that suit may be filed against any surety or sureties on any bond without making the person, who is the principal obligor on said bond, a party to said suit. If such person is still engaged in selling taxable items at retail, the Attorney General may file suit to enjoin such person from continuing in such business until the person's permit is reinstated by the Comptroller. The permit cannot be reinstated by the Comptroller until all taxes, penalty and interest are paid and until another bond or other security is furnished. The Comptroller shall fix the amount of such bond or other security, subject only to the limitations as to maximum amounts, which are stated in Subsection 1 of this Paragraph. Venue in any such suit or injunction action is fixed in Travis County, Texas;

(b) if the bond or other security is forfeited in whole or part with no remaining delinquency, the Comptroller shall notify the person and demand that such person furnish another or additional bond or security in the amount specified by the Comptroller in the notice within ten (10) days of the date of such notification. The amount of bond or security specified in the Notice shall be fixed by the Comptroller, subject only to the limitations as to maximum amounts, which are stated in Subsection 1 of this Paragraph. This Notice shall become final at the expiration of the ten (10) days.

If such person fails or refuses to furnish the bond as required by the Comptroller within the ten day period, the Comptroller shall thereafter follow the provisions of Paragraph E of this Article. If the permit of such person is revoked or suspended as a result thereof,

(1) the Comptroller shall notify the applicable city of any delinquency under the Local Sales and Use Tax Act.

(2) the Comptroller shall certify the name and address of such person to the Attorney General. If the person is still engaged in selling taxable items at retail, the Attorney General may file suit to enjoin such person from continuing in such business until the person's permit is reinstated by the Comptroller. The permit cannot be reinstated by the Comptroller until another or additional bond or other security is furnished. The Comptroller shall fix the amount of such bond or other security, subject only to the limitations as to maximum amounts, which are stated in Subsection 1 of this Paragraph. Venue in such suit or injunction action is fixed in Travis County, Texas.

(7) If any person shall fail or refuse to file a bond or security when required by Subsection (2) of this Paragraph and shall engage in the business of selling taxable items at retail, the Comptroller shall certify the name and address of such person to the Attorney General, who will bring suit to enjoin such person from continuing in business until a bond or security is furnished to the Comptroller and a permit is obtained.

(8) If any person shall fail or refuse to file a bond or security when required by Subsections (3), (4), or (5) of this Paragraph, the Comptroller shall follow the provisions of Paragraph E of this Article. If the permit is revoked or suspended as a result thereof, the Comptroller shall notify the applicable City of any delinquency under the Local Sales and Use Tax Act. The Comptroller shall certify the delinquent taxes, penalties and interest, if any, under this Chap-

ter to the Attorney General, who shall file suit to collect the amount or amounts due. If such person is still engaged in selling taxable items at retail, the Attorney General may bring suit to enjoin such person from continuing in business until such bond or security is furnished; until the delinquent taxes, penalties and interest, if any are paid, and until the permit is reinstated. Venue in any such suit or injunction action is fixed in Travis County, Texas.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1968, 60th Leg., 1st C.S., p. 4, ch. 2, § 5, eff. Oct. 1, 1968; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 15 to 22, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1194, ch. 292, art. 1, § 2, eff. July 1, 1971; Acts 1973, 63rd Leg., p. 776, ch. 345, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 285, ch. 134, § 1, eff. May 18, 1973; Acts 1973, 63rd Leg., p. 776, ch. 345, § 2, eff. Aug. 27, 1973.]

<sup>1</sup> Civil Statutes, art 1066c.

Acts 1973, 63rd Leg., p. 776, ch. 345, which by §§ 1 to 3 amended § (D) and added § (N) of this article and added § (M) of article 20.031, provided in §§ 4 and 5 thereof:

"Sec. 4. Severability. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 5. All laws or parts of laws in conflict herewith are repealed to the extent of the conflict."

#### Art. 20.03. Imposition and Rate of Use Tax

An excise tax is hereby imposed on the storage, use or other consumption in this State of taxable items purchased, leased or rented from any retailer for storage, use or other consumption in this State, at the same percentage rate as is provided in Article 20.02 of this Title, on the sales price of the taxable item, or in the case of leases or rentals, on said lease or rental prices.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1; Acts 1968, 60th Leg., 1st C.S., p. 5, ch. 2, § 6, eff. Oct. 1, 1968; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, § 23, eff. Oct. 1, 1969.]

#### Art. 20.031. Administration and Enforcement of Use Tax

(A) Liability for Use Tax: Extinguishment of Liability. Every person storing, using or otherwise consuming in this State taxable items purchased from a retailer or leased or rented from another person for such purpose is liable for the tax. His liability is not extinguished until the tax has been paid to this State, except that a receipt from a retailer engaged in business in this State or from a retailer who is authorized by the Comptroller, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this Chapter relating to the use tax regarded as a retailer engaged in business in this State, given to the purchaser pursuant to Section (B) of this Article is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(B) Collection by Retailer: Purchaser's Receipt. Every retailer engaged in business in this State and selling, leasing or renting taxable items for storage, use, or other consumption in this State shall at the

time of making the sale collect any use tax which may be due from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Comptroller.

"Retailer engaged in business in this State" as used in this Section (B) and the preceding Section (A) means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

(2) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this State under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any taxable items.

(C) Assumption, Absorption of Tax by Retailers, Unlawful Advertising. It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the taxable item sold, rented or leased, or that it or any part thereof will be refunded.

(D) Unlawful Acts. Any person convicted of violating Sections (B) or (C) of this Article shall be guilty of a misdemeanor and shall suffer the penalties set forth in Article 20.12(D) of this Chapter.

(E) Registration of Retailers. Every retailer selling, leasing or renting taxable items for storage, use or other consumption in this State shall register with the Comptroller and give:

(1) The names and addresses of all agents operating in this State.

(2) The location of all distribution or sales houses or offices or other places of business in this State.

(3) Such other information as the Comptroller may require.

(F) Presumption of Purchase for Use: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the use tax and of the duty to collect the use tax, it shall be presumed that tangible personal property sold, leased or rented by any person for delivery in this State is sold, leased or rented for storage, use or other consumption in this State until the contrary is established. The burden of proving the contrary is upon the person who sells, leases or rents the property unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for resale, leasing, or renting.

(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling taxable items. A

resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service rendered in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be sold, leased or rented or will be used for some other purpose.

(H) Form and Contents of Resale Certificate.

(1) The certificate shall:

(a) Be signed and bear the name and address of the purchaser.

(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business or transferred as an integral part of a taxable service rendered in the regular course of business.

(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business or for transfer as an integral part of a taxable service rendered in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

(J) Improper Use of Resale Certificates. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business or for transfer as an integral part of a taxable service rendered in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

(K) Resale Certificate: Commingled Fungible Goods. If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such a similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

(L) Presumption of Purchase from Retailer. It shall be further presumed in the absence of evidence

to the contrary, that tangible personal property shipped or brought to this State by the purchaser after the effective date of this Chapter was purchased from a retailer on or after the effective date of this Chapter for storage, use or other consumption in this State, and that any service used or consumed in this State on or after the effective date of inclusion of that service as a taxable service under this Chapter, was purchased from a retailer on or after that date for use or consumption in this State.

(M) A retailer as defined by this Article must comply with the provisions of Article 20.021(N) of this Chapter.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, § 24, eff. Oct. 1, 1969; Acts 1973, 63rd Leg., p. 779, ch. 345, § 3, eff. Aug. 27, 1973.]

**Art. 20.04. Exemptions**

(A) "Exempted from taxes imposed by this Chapter" means exempted from the computation of the amount of the taxes imposed.

(B) Exemption Certificates. If a purchaser certifies in writing to a seller that the taxable items purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the taxable items in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale of the taxable items at the time of the use, and the cost of the taxable items to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

Any person who gives an exemption certificate to the seller for taxable items which he knows, at the time of purchase, will be used in a manner other than that expressed in the exemption certificate is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

(C) Constitution and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of taxable items the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

(D) Items Taxed Under Existing Statutes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution, or the storage, use or other consumption in this State of:

(a) oil as taxed under the provisions of Chapter 4 of this Title;<sup>1</sup>

(b) sulphur as taxed under the provisions of Chapter 5 of this Title;<sup>2</sup>

(c) cigarettes as defined and taxed under the provisions of Chapter 7 of this Title;<sup>3</sup>

(d) cigars and tobacco products as defined and taxed under the provisions of Chapter 8 of this Title;<sup>4</sup>

(e) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this Title;<sup>5</sup>

(f) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title;<sup>6</sup>

(g) cement as taxed under the provisions of Chapter 18 of this Title;<sup>7</sup> and

(h) motor vehicles, trailers and semitrailers as defined, taxed or exempted under the provisions of Chapter 6 of this Title.<sup>8</sup>

(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of telephone and telegraph service.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, preparation, or service of mixed beverages or of ice or nonalcoholic beverages, if the receipts are taxable under Section 20d, Article I, Texas Liquor Control Act.<sup>9</sup>

(5) There are also exempted from the taxes imposed by this Chapter the receipts from the sale of alcoholic beverages to the holder of a Private Club Registration Permit, or to his agent or employee, acting as agent of the members of the club, if the beverages are to be served on the premises of the club.

**(E) Property Used in Manufacturing, Packaging and Containers.**

(1) Tangible Personal Property Used in Manufacturing. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of:

(a) tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail within or without this State; and

(b) tangible personal property used or consumed in or during any phase of such actual manufacturing, processing or fabricating operation, provided that the use or consumption of such tangible personal property is necessary or essential to the per-

formance of such operations. Chemicals, catalysts, and other materials which are used during such operations and which are used for the purpose of producing or inducing a chemical or physical change during such operations or for removing impurities or otherwise placing a product in a more marketable condition are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual manufacturing, processing, or fabricating operations. The exemption provided herein does not include the following:

(i) machinery, equipment and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

(ii) machinery, equipment, materials and supplies used in a manner that is merely incidental to the manufacturing, processing or fabricating operation such as intraplant transportation equipment, and maintenance and janitorial equipment and supplies;

(iii) hand tools such as hammers, wrenches, saws, etc.; and

(iv) tangible personal property used by a manufacturer, processor or fabricator in any activities other than the actual manufacturing, processing or fabricating operation such as office equipment and supplies, equipment and supplies used in selling or distributing activities, in research and development of new products, or in transportation activities.

**(2) Wrapping, Packing and Packaging Supplies.**

(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of expediting or furthering in any way the sale of that property.

(b) For the purpose of this Section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

(i) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes.

(ii) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

## (3) Containers.

(a) There are exempted from the taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption in this State of:

(i) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(ii) Containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

(iii) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(b) As used in this Article, the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day.

(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings.

## (G) Interstate Shipments.

(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer. There are exempted from the taxes imposed by this Chapter receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside this State by the retailer by means of:

(a) facilities operated by the retailer;

(b) delivery by the retailer to a carrier for shipment to a consignee at such point; or

(c) delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

(2) Common Carriers. There are exempted from the computation of the limited sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of

lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the tangible personal property is actually transported to the out-of-State destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

(a) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as a licensed and certificated carrier of persons or property.

(b) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property which is used solely outside this State.

(c) The storage, use or consumption of tangible personal property which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which tangible personal property would be exempt from the limited sales or use tax were it purchased within this State.

(d) The storage and use, in this State, of tangible personal property acquired outside this State for use as a repair or replacement part for and actually affixed in this State to a self-propelled vehicle which is a licensed and certificated common carrier of persons or property.

(H) United States; State; Political Subdivision; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any taxable items to, or the storage, use or other consumption of taxable items by:

(1) The United States, its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(3) The State of Texas, its unincorporated agencies and instrumentalities.

(4) Any county, city, special district or other political subdivision of this State.

(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

(I) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of taxable items and the storage, use or other consumption in this State of taxable items the transfer of which to the consumer constitutes an occasional sale or the sale of which to the consumer is made by way of an occasional sale.

(J) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any taxable item, the amount of any like tax paid by that taxpayer in another state, territory or possession of the United States of America with respect to the sale, purchase or use of the items; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

(K) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of taxable items, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or taxable items upon which a use tax has been paid by the taxpayer using said taxable items, is exempted from the use tax imposed by this Chapter.

(L) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

(1) "Food products" shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

(2) "Food products" shall not include:

(a) Medicines, tonics, vitamins and medicinal preparations in any form.

(b) Carbonated and noncarbonated packaged soft drinks and diluted juices where sold in liquid or frozen form; and ice and candy.

(c) Foods and drinks (which include meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of business or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle. Provided, however, that food and drinks purchased by

a common carrier for the purpose of serving passengers traveling en route aboard such carriers shall be exempt.

(M) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of braces, spectacles, hearing aids, orthopedic and dental prosthetic appliances, ileostomy, colostomy, and ileal bladder appliances and related supplies, and replacement parts designed specifically for such products.

(N) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and work animals.

(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

(5) Fertilizer.

(6) Machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, production of grass, the building or maintaining of roads and water facilities, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

(O) Sale for Resale: Leasing or Renting.

(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing, renting or for transfer as an integral part of a taxable service rendered in the regular course of business.

(2) However, if a person purchases tangible personal property for the purpose of leasing or renting it to another person, and if he later sells it by means of an occasional sale before he has collected and paid to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the tangible personal property for the purpose of so renting and leasing it, he shall, at

the time of his occasional sale of said tangible personal property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said tangible personal property.

(3) When a lessor makes a retail sale of leased tangible personal property to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

(P) Vessels.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, vessels used commercially as vessels for pleasure fishing by individuals as paying passengers thereon, or barges, of fifty (50) tons displacement and over, and the receipts from the sale of such ships, vessels, or barges when sold by the builder thereof, and repair services, renovation, and/or conversion, including labor and materials to such ships, vessels or barges.

(2) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials and supplies purchased by the owners or operators of ships or vessels operating exclusively in foreign or interstate coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; or to materials and supplies used in the repair of such ships and vessels where such materials and supplies enter into and become a component part of such ships or vessels.

(3) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of drilling equipment used in the exploration for or production of oil, gas, sulphur, or other minerals when such equipment is built for exclusive use outside the boundaries of the State and is removed forthwith from the State upon completion.

(Q) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State and repair services to aircraft operated by a certificated or licensed carrier of persons or property.

(R) Gas and Electricity. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for residential use or commercial use.

For the purpose of this subsection, the terms "residential use" and "commercial use" shall have the following meanings:

"Residential use" means use in a family dwelling or building or portion thereof occupied as the home, residence, or sleeping place of one or more persons.

"Commercial use" means use by persons engaged in selling, warehousing or distributing a commodity or service, either professional or personal.

The term "commercial use" specifically does not include use by persons engaged in:

(1) processing tangible personal property for sale as tangible personal property;

(2) exploration for or production and transportation of a material extracted from the earth;

(3) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation; or

(4) electrical processes such as electroplating, electrolysis and cathodic protection.

(S) Rolling Stock. There are exempted from the taxes imposed by this Chapter receipts from any sale, use, storage or other consumption of locomotives and rolling stock, including fuel or supplies essential to the operation of locomotives and trains.

(T) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of books consisting wholly of writings sacred to any religious faith and religious periodicals published or distributed by any religious faith consisting wholly of writings promulgating the teachings of such faith.

(U) Vending Machine Sales.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale of tangible personal property when sold through a coin-operated vending machine for a total consideration of sixteen cents (16¢) or less.

(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale of telephone service paid for by inserting coins in coin-operated telephones.

(V) Transfers Without Substantial Change in Ownership. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State, pursuant to the terms of a good faith bona fide contractual relationship, of an interest in tangible personal property to a partner, co-owner or other person who before or after such a sale owns a joint or undivided interest (with the

seller) in such tangible personal property where the Texas Limited Sales, Excise and Use Tax has previously been paid on such tangible personal property.

(W) Casing, Drill Pipe, Tubing, and Other Pipe. There are exempted from the taxes imposed by this Chapter, the receipts from the sale, lease, or rental in this State of casing, drill pipe, tubing, and other pipe to be used in exploration for or production of oil, gas, sulphur, and other minerals offshore outside the territorial limits of the State.

(X) Property for Use in Offshore Exploration and Production.

(a) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental in this State of tangible personal property for use exclusively in the exploration for or the production of oil, gas, sulphur, or other minerals offshore and outside the territorial limits of the State.

(b) The property described in Subdivision (a) of this section may be delivered to the purchaser or lessee in this State and removed by means of his own facilities or by any other means beyond the territorial limits of the State.

(c) Receipts from the sale, lease or rental of property described in Subdivision (a) of this section are exempt when the property is shipped to any place in the State for further assembly or fabrication, and receipts from the sale, lease or rental of such property made upon completion of the assembly or fabrication are exempt if the property is forthwith removed beyond the territorial limits of the State.

(Y) Contracts with Exempt Organizations. There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by, any contractor for the performance of a contract for the improvement of realty for an exempt organization as defined in Section 20.04(H) of this Chapter or otherwise exempt from the taxes imposed by this Chapter to the extent of the value of the tangible personal property so used or consumed or both in the performance of such contract.

(Z) There are exempted from the taxes imposed by this Chapter the receipts from the leasing or licensing of motion picture films of any kind to or by motion picture theatres which are subject to admission taxes as imposed by Chapter 21, Title 122A, Revised Civil Statutes of Texas, 1925, as amended, and to or by licensed television stations.

(AA) A "volunteer fire department" means any company, department or association organized for the purpose of answering fire alarms and extinguishing fires, the members of which receive no compensation or nominal compensation for their services thus rendered. There are exempted from the taxes imposed by this Chapter the receipts from

the sale, lease, or rental in this State of taxable items to any volunteer fire department for its exclusive use.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1967, 60th Leg., p. 159, ch. 84, § 1, eff. July 1, 1967; Acts 1967, 60th Leg., p. 1060, ch. 464, §§ 1, 2, eff. Aug. 28, 1967; Acts 1968, 60th Leg., 1st C.S., p. 8, ch. 2, §§ 9, 10, eff. Oct. 1, 1968; Acts 1969, 61st Leg., p. 1522, ch. 458, § 2, eff. June 10, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, § 25, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., 1st C.S., p. 20, ch. 3, § 3, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 3036, ch. 1001, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1, ch. 1, § 1, eff. Feb. 5, 1971; Acts 1973, 63rd Leg., p. 706, ch. 301, § 1, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 19, ch. 16, § 2, eff. Aug. 27, 1973.]

<sup>1</sup> Article 4.01 et seq.

<sup>2</sup> Article 5.01 et seq.

<sup>3</sup> Article 7.01 et seq.

<sup>4</sup> Article 8.01 et seq.

<sup>5</sup> Article 9.01 et seq.

<sup>6</sup> Article 10.01 et seq.

<sup>7</sup> Article 18.01 et seq.

<sup>8</sup> Article 6.01 et seq.

<sup>9</sup> Penal Auxiliary Laws, art. 666-20d.

#### Art. 20.05. Return and Payments

(A) Due Date of Taxes. Except as otherwise provided in this Section, the taxes imposed by this Chapter are due and payable to the Comptroller quarterly on or before the last day of the month next succeeding each quarterly period. If a taxpayer owes in excess of \$750 for any one calendar month, the taxes for that month are due and payable to the Comptroller on or before the last day of the next succeeding month. Nothing in this section will preclude any taxpayer from prepaying his tax as set out in Section (E) of this Article. If such tax is prepaid the taxpayer shall not be required to file monthly reports but may file quarterly reports as provided herein.

(B) Method Retailer Is to Use in Computing Tax. The limited sales tax levied under Article 20.02 shall be computed and paid to the Comptroller on the basis of the same percentage rate as is provided in Article 20.02 of this Title, applied to all receipts from the total sales of taxable tangible personal property and taxable services sold by the retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty per cent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is twelve cents (12¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to

be a failure and refusal to pay the Limited Sales, Excise and Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter.

(C) Return; Time for Filing; Persons Required to File; Signatures; Accounting Basis.

(1) On or before the last day of the month following each quarterly period of three (3) months, except as provided in Subsection (5) of this Section, a return for said quarterly period shall be filed with the Comptroller in such form as the Comptroller may prescribe. If the taxpayer is required to make payments on a monthly basis, the report shall be filed with the Comptroller on or before the last day of the month following the month covered by the report.

(2) For purposes of the limited sales tax a return shall be filed by every person subject to the tax. For purposes of the use tax a return shall be filed by every retailer engaged in business in the State and by every person who has purchased taxable items, the storage, use or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(3) Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

(4) A taxpayer who keeps his regular books and records on a cash basis or on an accrual basis, or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the tax returns required by this Chapter on the same accounting basis that is used for the regular books and records.

(5) A taxpayer whose business is solely manufacturing, as defined in Paragraph (U), Article 20.01 of this Chapter, and who derives less than two per cent (2%) of his receipts from taxable sales, leases, or rentals during a quarterly period may omit the return required under this Section provided he files annually on either a calendar year basis or on the basis of his fiscal year a like report for his yearly operation.

(D) Contents of Return.

(1) For the purposes of the limited sales tax, the return shall show the sale or receipts of the retailer or seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total receipts from sales of taxable items sold by him during the preceding reporting period which was purchased for the purpose of storage, use or consumption in this State.

(2) Gross proceeds from taxable rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the Comptroller may prescribe.

(3) In case of a return filed by the purchaser, the return shall show the total sales price of the taxable items purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

(4) The return shall also show the amount of the taxes for the period covered by the return and such other information as the Comptroller deems necessary for the proper administration of this Chapter.

(E) Reimbursement to Taxpayer for Collection of Tax; Prepayments. The taxpayer shall deduct and withhold from the taxes otherwise due from him on his quarterly or monthly tax return, one percent (1%) thereof to reimburse himself for the cost of collecting the tax. Provided, however, an additional two percent (2%) deduction shall be allowed a taxpayer who makes prepayments of his tax liability based upon a reasonable estimate of his tax liability for the quarter in which the prepayment is made, or for the month in which the prepayment is made. In order for the taxpayer to be entitled to the additional two percent (2%) discount, the prepayment must be made on or before the fifteenth day of the second month of the calendar quarter for which the payment is made, or in the case of a taxpayer required to make monthly payments, the prepayment must be made on or before the fifteenth (15th) day of the month for which the prepayment is made.

A taxpayer making a prepayment of his tax as provided for in this paragraph is not relieved from the filing of quarterly or monthly returns as provided for elsewhere in this Chapter. At the time the taxpayer files his quarterly or monthly return showing his actual tax liability any prepayments made by the taxpayer shall be credited against his tax liability; in the event that there is tax liability owed by the taxpayer in excess of the prepayment, the taxpayer shall remit such excess at the time of filing his quarterly or monthly return and from such excess shall deduct and withhold one percent (1%) of the amount of the excess. If the tax liability of the taxpayer is less than the prepayment of taxes, the excess of the prepayment shall be recorded as a credit against future tax liability or refunded to the taxpayer as provided for in Article 20.10.

In the event the payment of any taxes due under the applicable provisions of this Chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this Chapter, the taxpayer forfeits his claim to any discount, including any discount that might have been taken by a taxpayer at the time of making a prepayment.

(F) Return Periods; Quarterly Periods Other Than Calendar Quarters. The Comptroller, if he deems it necessary in order to insure payment to or facilitate the collection by the State of the amount of taxes due, may require returns and payment of the amount of said taxes for quarterly periods other

than calendar quarters, in the case of a particular seller, retailer or purchaser, as the case may be, or for other than quarterly periods.

(G) Delivery of Return: Remittance. The person required to file the return shall deliver the quarterly or monthly return together with a remittance of the net amount of the tax due to the office of the Comptroller.

(H) Penalties for Failure to Pay or Report. If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%). Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from the date due.

(I) Optional Reporting Methods for Certain Vendors.

(1) Notwithstanding any other provision of this Chapter, retail grocers as that term is defined herein, may elect to report their taxable receipts from the sale of tangible personal property by either of the following methods:

(a) Any retail grocer or any vendor who maintains a separate grocery department with separate records which may be audited by the State, as applies to the grocery department only, may determine his taxable receipts from the sale of tangible personal property in the following manner:

(i) Add all invoices for merchandise purchased during the next preceding calendar or fiscal year to obtain a total of such purchases.

(ii) Add all invoices for exempt merchandise purchased during the next preceding calendar or fiscal year to obtain a total of such purchases.

(iii) Divide the total amount of exempt merchandise purchases (item ii) by the amount of total purchases (item i) to obtain a percentage relationship.

(iv) Multiply the total receipts from all sales during the reporting period by the percentage thus obtained (item iii).

(v) Deduct the figure obtained by this multiplication (item iv) from total receipts for the reporting period. The remaining amount will be the taxable receipts from the sale of tangible personal property. To this must be added any purchases upon which the use tax is imposed by Article 20.03 of this Chapter.

This method of calculating taxable receipts from the sale of tangible personal property is available for reporting purposes only and is subject to such audits as the

Comptroller may require. If such audit indicates that the actual tax liability differs from the tax reported and paid, then the Comptroller shall assess additional tax or grant a refund or credit. No penalties or interest shall be assessed on additional taxes disclosed to be due by audit unless said audit discloses fraud or willful evasion of the tax. No interest shall be paid by the State on any overpayment of tax that may be disclosed upon audit.

(b) Any retail grocer whose total receipts do not exceed One Hundred Thousand Dollars (\$100,000) per annum may elect to report and pay the taxes imposed by this Chapter on the basis that his taxable receipts from the sale of tangible personal property are equal to fifteen per cent (15%) of his total receipts.

State audits covering the period during which this method of reporting is being or has been used shall be limited to a determination of the eligibility of the grocer to exercise this option. No additional taxes shall be assessed or refunds or credits allowed because of any showing that the amount of tax paid the State under this method of reporting differs from the amount that would have been paid under any other reporting method.

Grocers electing to use this method of reporting shall be required to continue in the manner prescribed for a period of three (3) years following such election provided the total receipts of such grocers continue to be One Hundred Thousand Dollars (\$100,000) or less. At such time as the gross receipts of any grocer exceed One Hundred Thousand Dollars (\$100,000), such grocer shall, upon the next succeeding calendar month, be ineligible to use this optional method and he shall promptly inform the Comptroller of this fact and shall cease to use such basis immediately. Any retail grocer who fails to inform the Comptroller of his ineligibility shall lose the immunity from audit assessment provided by this subsection and shall be liable for all back assessment, penalties and interest prescribed by this Chapter.

(c) For the purpose of this Section (I), the term "retail grocer" shall mean a retail vendor selling food for human consumption off the premises where sold together with household supplies and nondurable household goods.

(2) Notwithstanding any other provision of this Chapter, any vendor whose taxable receipts from the sale of taxable items are less than ten per cent (10%) of his total receipts may elect to report his taxable receipts from the sale of taxable items by the method set forth by para-

graph (a) of subsection (1) of this Section (I) irrespective of the fact that such vendor may not fall within the definition of the term "retail grocer" as that term is defined by paragraph (c) of subsection (1) of this Section (I).

(3) This Section (I) does not change either the reporting periods or the reporting dates as provided in Article 20.05(A) and elsewhere in this Chapter. The waiver of penalties and interest provided by this Section (I) does not apply to any penalty and interest which may be assessed as a result of failure to file a return or failure to file a return on the proper reporting date or failure to remit with the return the correct amount of the tax due.

(J) **Commingled Tax and Receipts.** Any retailer who establishes an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of taxable items may determine taxable receipts in the following manner:

(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax imposed by this Chapter. The remainder shall consist of the receipts from the sale of taxable items plus the tax collected pursuant to the provisions of this Chapter.

(2) This remainder shall then be divided by 1.04. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

The sole purpose of this Section is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the State a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter.

(K) **Direct Payment Procedure Authorized.** The Comptroller shall establish a system of direct payment which shall be applicable to those consumers who meet the qualifications set forth in this Section and who, after approval by the Comptroller, are issued a direct payment permit. The holder of a direct payment permit may issue to all of the vendors or sellers from whom purchases of taxable items are made a blanket exemption certificate covering all future purchases made by the direct payment permit holder and such certificate shall show the number of the direct payment permit and shall specify that the direct payment permit holder agrees to accrue and pay to the State of Texas all taxes which are or may in the future be due on taxable items purchased pursuant to exemption certificate.

(1) Direct payment permits may be issued by the Comptroller after receipt of a written appli-

cation for such a permit. The application shall be accompanied by:

(a) Records establishing the fact that the applicant is a responsible person annually purchasing taxable items having a value when purchased equal to or in excess of Two Hundred Thousand Dollars (\$200,000) exclusive of any purchase for which a resale certificate authorized by Article 20.021(F) of this Chapter can be or could have been issued.

(b) A description, in such detail as the Comptroller may require, of the accounting methods by which the applicant proposes to differentiate between taxable and exempt purchases.

(c) An agreement, in a form prescribed by the Comptroller and signed by the applicant or, if a corporation, by a responsible officer thereof, under which the applicant agrees to accrue and pay all taxes imposed by Article 20.03 of this Chapter on all purchases not specifically exempted by Article 20.04 of this Chapter. The agreement shall stipulate that the applicant agrees to remit the taxes due quarterly on or before the last day of the month next succeeding each quarterly period. Such agreement shall also stipulate that the applicant agrees to waive any claim for the discount authorized by Article 20.05(E) of this Chapter on any tax paid by him pursuant to a direct payment permit, provided, however, that if the applicant holds a valid seller's permit issued under the provisions of Article 20.021(C) of this Chapter he shall continue to be entitled to claim the discounts authorized on sales made pursuant to such seller's permit.

(2) A direct payment permit shall be issued to any applicant who meets, to the satisfaction of the Comptroller, the qualifications set forth in subsection (1) of this Section. The Comptroller shall be the sole judge of whether such qualifications have been met and refusal by the Comptroller to issue a direct payment permit shall not be appealable. Any applicant may, however, request an opportunity to submit an amended application or if denied a direct payment permit, after a reasonable length of time, he may submit a new application.

(3) Persons holding direct payment permits hold them as a matter of revocable privilege and not as a matter of right and the Comptroller may, upon his own initiative and with reasonable notice, cancel any direct payment permit. A cancellation shall not be appealable. The Comptroller shall notify a direct payment permit holder that his permit has been cancelled by registered mail and, immediately upon receipt of such notification, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of taxable items are

made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of taxable items are made of the cancellation of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notices.

(4) Any direct payment permit holder may voluntarily relinquish such permit by notifying the Comptroller of his desire to relinquish such permit. Such voluntary relinquishment of a direct payment permit shall not be effective until a termination notice is issued by the Comptroller. Immediately upon receipt of the Comptroller's termination notice, the direct payment permit holder shall contact all the vendors or sellers from whom purchases of taxable items are made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of taxable items are made of the voluntary relinquishment of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notice.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1967, 60th Leg., p. 2069, ch. 770, § 1, eff. Aug. 23, 1967; Acts 1968, 60th Leg., 1st C.S., pp. 7, 9, ch. 2, §§ 7, 11, eff. Oct. 1, 1968; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 26 to 31, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 1194, ch. 292, art. 1, §§ 3, 4, eff. July 1, 1971; Acts 1973, 63rd Leg., p. 1622, ch. 584, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1622, ch. 584, § 2, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1622, ch. 584, § 3, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1622, ch. 584, § 4, eff. Jan. 1, 1974.]

Sections 1 to 5 of the 1973 Act amended §§ (A), (C)(1), (E), (G) of this article and § (B)(1) of art. 20.10; § 6 thereof provided: "This Act takes effect on January 1, 1974."

#### Art. 20.06. Deficiency Determination

##### (A) Recomputation of Tax; Determination on Discontinuance of Business.

(1) If the Comptroller is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the State by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or which may come into his possession. Nothing in this or any other Section of this Act shall be construed to preclude the Comptroller from proceeding against the consumer for any tax which the consumer should have paid but failed to pay.

(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (D) of this Article as to liability arising out of that

business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

(B) Penalty for Fraud, Intent to Evade. If any part of a deficiency for which a deficiency determination is made is due to fraud or an intent to evade this Chapter or authorized rules and regulations, a penalty of twenty-five per cent (25%) of the amount of the determination shall be added thereto.

(C) Notice of Comptroller's Determination; Service.

(1) The Comptroller shall give to the retailer or person storing, using or consuming taxable items written notice of his determination.

(2) The notice may be served personally or by mail; if by mail, the notice shall be addressed to the retailer or person storing, using or consuming taxable items at his address as it appears in the records of the Comptroller.

(3) In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit in the United States Post Office.

(D) Time Within Which Notice of Deficiency Determination to be Mailed; Consent to Later Mailing of Notice.

(1) Every notice of a deficiency determination shall be personally served or mailed within four (4) years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within four (4) years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within four (4) years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(2) The limitation specified in this Article does not apply in case of a limited sales tax proposed to be determined with respect to sales of taxable items for the storage, use or other consumption of which notice of a deficiency determination has been or is given pursuant to paragraphs (C), (D)(1) and (G) of this Article, and paragraph (B) of Article 20.07. The limitation specified in this Article does not apply in case of an amount of use tax proposed to be determined with respect to storage, use or other consumption of taxable items for the sale of which notice of a deficiency determination has been or is given pursuant to paragraphs (C), (D)(1), and (G) of this Article, and paragraph (B) of Article 20.07 and to subparagraph 1 of this paragraph.

(3) If, before the expiration of the time prescribed in this Article for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed any

time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

**(E) Determination if No Return Made; Estimate and Computation; Discontinuance of Business.**

(1) If any person fails to make a return, the Comptroller shall make an estimate of the receipts of the person, or, as the case may be, of the amount of the total sales, rent or lease price of taxable items sold, rented or leased or purchased, by the person, the storage, use or other consumption of which in this State is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Comptroller's possession or may come into his possession. Upon the basis of this estimate, the Comptroller shall compute and determine the amount required to be paid to the State, adding to the sum thus arrived at a penalty equal to ten per cent (10%) thereof. One or more determinations may be made for one or for more than one period.

(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (D) of this Article as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

**(F) Offsets; Computation; Interest.**

(1) In making a determination, the Comptroller may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

(2) The interest on underpayments shall be computed in the manner set forth in paragraph (G) of Article 20.08.

**(G) Notice of Estimate, Determination and Penalty; Service.** Promptly after making his determination, the Comptroller shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 32 to 34, eff. Oct. 1, 1969.]

**Art. 20.07. Jeopardy Determinations**

**(A) Jeopardy Determination; When Made; Due Date.** If the Comptroller believes that the collection of any tax or any amount of tax required to be collected and paid to the State or the amount of any determination will be jeopardized by delay, he shall

thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is due and payable immediately.

**(B) Nonpayments; Finality of Determination.** If the amount specified in the determination is not paid within twenty (20) days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the twenty (20) days unless a petition for redetermination is filed within the twenty (20) days, a delinquency penalty of ten per cent (10%) of the tax or amount of the tax and the interest provided in paragraph (G) of Article 20.08 shall attach to the amount of the tax or the amount of the tax required to be collected.

**(C) Petition for Redetermination; Deposit of Security.** The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to paragraphs (A) through (G) of Article 20.08. He shall, however, file the petition for redetermination with the Comptroller within twenty (20) days after the service upon him of notice of determination. The person shall also within the twenty-day period, deposit with the Comptroller such security as the Comptroller may deem necessary to insure compliance with this Chapter. The security may be sold by the Comptroller in the manner prescribed by paragraph (A), Article 20.09. [Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

**Art. 20.08. Petition for Redetermination**

**(A) Time to File.**

(1) Any person against whom a determination is made under paragraphs (A) through (G) of Article 20.06, or any person directly interested, may petition for a redetermination within thirty (30) days after service upon the person of notice thereof.

(2) If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

**(B) Oral Hearing; Notice; Continuances.**

(1) If a petition for redetermination is filed within the thirty-day period, the Comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him twenty (20) days' notice of the time and place of the hearing.

(2) The Comptroller may continue the hearing from time to time as may be necessary.

**(C) Increase, Decrease and Amount of Determination.** The Comptroller may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing, upon which the petitioner shall be entitled to a thirty-day continuance of the hear-

ing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

(D) Order of Comptroller on Petition for Redetermination; Finality of Order. The order or decision of the Comptroller upon a petition for redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof.

(E) Due Date of Determinations; Penalties. All determinations made by the Comptroller under paragraphs (A) through (G) of Article 20.06 are due and payable twenty (20) days after the time they become final. If they are not paid when due and payable, a penalty of ten per cent (10%) of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(F) Service of Notice. Any notice required by paragraphs (A) through (E) of this Article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(G) Interest for Failure to Pay Tax; Amount; Rates. Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State within the time required, shall pay, in addition to the tax or amount of tax, interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from the date on which the tax or the amount of tax required to be collected became due and payable to the State until the date of payment.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

#### Art. 20.09. Collection of Tax

(A) Notice of Delinquency to Persons Holding Credits or Property of Delinquent; Transfer or Disposition of Property or Debt after Notice; Bank Deposits.

(1) If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Comptroller may, not later than three (3) years after the payment became delinquent or within three (3) years after the last recording of a lien, give notice thereof personally or by registered mail to all persons, including any officer or department of the State or any political subdivision or agency of the State, having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent, or persons owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any State officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Comptroller.

(2) After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the Comptroller consents to a transfer or disposition, or until sixty (60) days elapse, after receipt of the notice, whichever period expires earlier.

(3) All persons so notified shall, within twenty (20) days after receipt of the notice, advise the Comptroller of all such credits, other personal property, or debts in their possession, under their control, or owing by them.

(4) If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, in order to be effective, shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held.

(5) If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid, he shall be liable to the State for any indebtedness due under this Chapter from the person with respect to whose obligation the notice was given.

(B) Action for Collection of Tax, Penalties, Interest; Limitation. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within (3) years after the delinquency of any tax or any amount required to be collected, or within three (3) years after the last recording of a lien, the Comptroller may bring an action in the courts of this State, or any other State, or of the United States, in the name of the people of the State of Texas, to collect the amount delinquent together with penalties and interest.

(C) Attorney General to Prosecute Action. The Attorney General shall prosecute the action, and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals shall be applicable to the proceedings.

(D) Issuance of Writ of Attachment Without Bond, Affidavit. In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

(E) Evidentiary Effect of Delinquency Certificate. In the action a certificate by the Comptroller showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amounts set forth, and of the compliance by the Comptroller with all the provisions of this Chapter in relation to the computation and determination of the amounts.

(F) Action for Use Tax; Manner of Service of Process. In any action relating to the use tax brought under this Chapter, process may be served according to the Rules of Civil Procedure or may be served upon any agent or clerk in this State employed by any retailer in a place of business maintained by the retailer in this State. In the latter case, a copy of the process shall forthwith be sent by registered mail to the retailer at his principal or home office.

(G) Judgment for Taxes.

(1) Comptroller May Sue. If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may, within three (3) years after the amount is due, file in a court of competent jurisdiction in Travis County, Texas, or any county where the person owing the tax may be a resident or have a place of business, an action for recovery of such tax, together with any penalties and interest. Such action shall be in the form of an action for debt, and the certificate of the Comptroller or his duly authorized agent that the tax is due, specifying the amount due together with penalty and interest, shall be prima facie evidence of the justness and correctness of such claim by the State. Service may be had according to the provisions of Article 20.09, paragraph (F) of this Chapter.

(2) Judgments May be Abstracted. Any judgment obtained in favor of the State by an action brought under this Article may be filed for record with the county clerk of any county in this State and when so filed, shall constitute a lien upon all of the real property in the county owned by the person named as defendant in the judgment or thereafter acquired by him. Such lien shall have the force and effect of a judgment lien for ten (10) years from the date of judgment unless sooner released or discharged.

(3) Release. Upon payment in full of the amount of any judgment obtained under this Article, the Comptroller may issue a release of any such judgment lien. Prior judgments for taxes and penalties shall not bar subsequent suit by the Comptroller for additional taxes, or penalties or interest accruing after any such prior judgment, provided such suits are instituted within three (3) years after such taxes are due.

(4) Execution. Execution may issue upon any judgment obtained under this Article in the same manner as execution may issue in other judgments for debt, and sale shall be held under such execution as prescribed in the Rules of Civil Procedure and Statutes of this State.

(H) Seizure and Sale.

(1) Seizure and Sale. At any time within three (3) years after any person is delinquent in the payment of any amount, the Comptroller may forthwith collect the amount in the following manner: The Comptroller shall seize any

property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties on account of the seizure and sale. Any seizure made to collect a sales tax due shall be only of property of the vendor not exempt from execution under the laws of this State.

(2) Notice of Sale. Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least twenty (20) days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for limited sales tax due, at his last known address or place of business, and in case of a sale for use taxes due, at his last known residence or place of business in this State. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten (10) days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three (3) public places in the county twenty (20) days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with the law and the notice.

(3) Bill of Sale; Deed. At the sale, the Comptroller shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(4) Disposition of Proceeds. If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the State, the Comptroller shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the Comptroller prior to the sale notice of his interest or lien, the Comptroller shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Comptroller shall deposit the excess moneys with the State Treas-

sure, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

**(I) Payment on Termination of Business and Successor's Liability.**

(1) **Withholding by Purchaser.** If any vendor liable for any amount under this Chapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Comptroller showing that it has been paid or a certificate stating that no amount is due.

(2) **Liability of Purchaser; Release.** If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the Comptroller shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Comptroller of the amount that must be paid as a condition of issuing the certificate. Failure of the Comptroller to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the vendor sells out his business or stock of goods or at the time that the determination against the vendor becomes final, whichever event occurs the later.

**(J) Security for Tax May be Required.** In all cases where he deems that it is necessary to insure compliance with the provisions of this Chapter the Comptroller may require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a permit under this Chapter. Such security shall be in the form and such amount as the Comptroller deems appropriate under the particular circumstances but shall not be in an amount in excess of four times the estimated average quarterly liability for taxes imposed by this Chapter or Fifty Thousand Dollars (\$50,000), whichever is the lesser. Any security required to be deposited may be sold by the Comptroller at public sale if it becomes necessary so to do in order to recover any tax, interest or penalty due. Notice of such sale may be served upon the person who deposited such security personally or by mail. If by mail, notice sent to the last known address, as the same appears in the records of the Comptroller's office shall be sufficient for the purpose of this requirement. Upon such sale the surplus, if any, above the amount due under this

Chapter, shall be returned to the person who deposited the security.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

**Art. 20.10. Overpayments and Refunds**

**(A) Certification of Excess Amount Collected: Credit and Refund.** If the Comptroller determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Comptroller shall set forth that fact in his records, and the excess amount collected or paid may be credited on any amount then due and payable from the person under this Chapter. Any balance may be refunded to the person by whom it was paid, or his successors, administrators or executors.

**(B) Claims for Refund, Credit: Limitation.**

(1) No refund shall be allowed unless a claim therefor is filed with the Comptroller by the person who overpaid the tax or his attorney, assignee, executor, or administrator within three (3) years from the last day of the month following the close of the quarterly or monthly period for which the overpayment was made, or within six (6) months after any determination becomes final under paragraphs (A) through (G) of Article 20.06 or within six (6) months from the date of overpayment with respect to such determinations, whichever of these three (3) periods expires the later.

(2) No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Comptroller within such period, or unless the credit relates to a period for which a waiver is given pursuant to paragraph (D) under Article 20.06.

**(C) Claims for Refund, Credit: Form: Contents.** Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

**(D) Effect of Failure to File Claim: Waiver.** Failure to file a claim within the time prescribed in paragraph (B) of this Article constitutes a waiver of any demand against the State on account of overpayment.

**(E) Notice of Disallowance of Claim: Service.** Within thirty (30) days after disallowing any claim in whole or in part, the Comptroller shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency determination.

**(F) Injunction: Other Process to Prevent Tax Collection Prohibited.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

**(G) Action for Refund: Claim as Condition Precedent.** No suit or proceeding shall be maintained in

any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(H) Action for Refund; Time to Sue; Venue of Action; Waiver.

(1) Within ninety (90) days after the mailing of the notice of the Comptroller action upon a claim filed pursuant to this Chapter, the claimant may bring an action against the Comptroller on the grounds set forth in the claim in a court of competent jurisdiction in Travis County, Texas, for recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

(2) Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayment.

(I) Right of Action on Failure to Mail Notice. If the Comptroller fails to mail notice of action on a claim within six (6) months after the claim is filed the claimant may, prior to the mailing of notice by the Comptroller of his action on the claim, consider the claim disallowed and bring an action against the Comptroller on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(J) Judgment for Plaintiff: Credits: Refund of Balance.

(1) If judgment is rendered for the plaintiff the amount of the judgment shall be credited on any limited sales tax, use tax, penalties or interest due from the plaintiff and the balance of the judgment shall be refunded to the plaintiff.

(K) Allowance of Interest. In any judgment, interest shall be allowed at the rate of six per cent (6%) per annum upon the amount found to have been illegally collected from the date of payment of the amount to date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than thirty (30) days, the date to be determined by the Comptroller.

(L) Recovery of Erroneous Refunds: Action: Jurisdiction and Venue. The Comptroller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within one year from the date of refund or credit, in the name of the State, in a court of competent jurisdiction in the county in which the person involved is located.

(M) Change of Venue in Action to Recover Erroneous Refund. The action shall be tried in the county in which the person involved is a resident unless the court with the consent of the Attorney General orders a change of place of trial.

(N) Attorney General to Prosecute Action for Recovery of Erroneous Refund. The Attorney General shall prosecute the action, and the provisions of State law and the Rules of Civil Procedure relating

to the service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1973, 63rd Leg., p. 1623, ch. 584, § 5, eff. Jan. 1, 1974.]

#### Art. 20.11. Administration

(A) Enforcement by Comptroller: Rules and Regulations.

(1) The Comptroller shall enforce the provisions of this Chapter and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this Chapter.

(2) The Comptroller may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(B) Employment of Accountants, Investigators and other Persons: Delegation of Authority. The Comptroller may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this Chapter and may delegate authority to his representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this Chapter.

(C) Records to be Kept by Sellers, Retailers and Others.

(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State taxable items purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

(2) Every such seller, retailer or person shall keep such records for not less than four (4) years from the making of such records unless the Comptroller in writing sooner authorizes their destruction.

(D) Examination of Records; Investigation of Business. The Comptroller, or any person authorized in writing by him, may examine the books, papers, records and equipment of any person selling taxable items and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(E) Taxpayer's Right to Keep Records Out of State. The taxpayer shall have the right to keep or store his records at a point outside this State, but, if the Comptroller wishes to examine said records, the taxpayer shall either bring the records into the State for such examination or shall reimburse the Comptroller for the increased expense of making the examination at the out-of-state location.

(F) Reports for Administering Use Tax: Contents. In administration of the use tax, the Comptroller may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of

taxable items, the storage, use or other consumption of which is subject to the tax. The report shall:

(1) Be filed when the Comptroller requires.

(2) Set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the Comptroller may require.

(G) Disclosure of Information Unlawful: Examination of Records.

(1) It shall be a misdemeanor for any official or employee of the Comptroller to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Comptroller.

However, the Comptroller may, by general or special order, authorize examination by other State officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person of the records maintained by the Comptroller under this Chapter.

Nothing herein contained shall be construed to prevent: The delivery to a taxpayer, or his duly authorized representative, of a copy of any report or other paper filed by him pursuant to the provisions of this Chapter; the publication of statistics so classified as to prevent the identification of a particular report and the items thereof; the use of such records, reports, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter in any action against the same taxpayer for a penalty or any tax due under any provision of this Chapter.

(2) Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 35, 36, eff. Oct. 1, 1969.]

#### Art. 20.12. Violations

(A) Penalty for Engaging in Business as Seller Without Permit. A person who engages in business as a retailer in this State without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, is guilty of a misdemeanor, and such per-

son shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction. Each day of such operation shall constitute a separate offense.

(B) Penalty for Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for property which he knows, at the time of purchase, is purchased for the purpose of use rather than the purpose of resale, lease or rental by him in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business, is guilty of a misdemeanor and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

(C) Penalty for Failure to Make Return, Furnish Data. Any retailer or other person who refuses to furnish any return required to be made, or who refuses to furnish a supplemental return or other data required by the Comptroller, shall be guilty of a misdemeanor, and shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

(D) Penalty for Other Violations. Any violation of this Chapter, except as otherwise provided, is a misdemeanor, and any person shall, when found guilty of such violation, be fined not more than Five Hundred Dollars (\$500) for each violation.

(E) Statute of Limitations. Any prosecution for violation of any of the penal provisions of this Chapter shall be instituted within four (4) years after the commission of the offense.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, § 37, eff. Oct. 1, 1969.]

#### Art. 20.13. Disposition of Proceeds

All fees, taxes, interest and penalties imposed, and all amounts of tax required to be paid to the State under this Chapter shall be paid to the Comptroller in the form of remittances payable to the Comptroller of Public Accounts of Texas. The Comptroller shall remit all fees, taxes, interest and penalties collected to the State Treasurer to be deposited in the State Treasury in the following manner:

(1) The State Treasurer shall deposit all proceeds from the taxes imposed by this Chapter to the credit of the General Revenue Fund except that portion of the proceeds which the Comptroller of Public Accounts shall certify arises from the application of the taxes imposed by this Chapter to the sale and use of lubricating oils and motor oils consumed on the public roads, streets and highways of this State.

(2) The State Treasurer shall deposit to the credit of the State Highway Fund so much of the proceeds of the taxes imposed by this Chapter as the Comptroller shall certify arises from the application of the taxes imposed by this Chapter to the sale and use of lubricating oils

and motor oils used to propel motor vehicles over the public roadways.

The amount to be deposited to the credit of the State Highway Fund shall be determined by the Comptroller based on available statistical data indicating the estimated average or actual consumption or sales of lubricants used to propel motor vehicles over the public roadways. In the event that satisfactory statistical data as to such consumption or use of lubricants is not available the Comptroller may at his discretion, require that taxpayers making taxable sales or use of such lubricants in this State furnish such information to the Comptroller as is necessary to make the appropriate allocations required under this Article.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

#### Art. 20.14. Remedies of State are Cumulative

The remedies of the State provided for in this Chapter are cumulative and no action taken by the Comptroller or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

#### Art. 20.15. Comptroller's Authority

In all proceedings under this Chapter the Comptroller may act for and on behalf of the people of the State of Texas.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

#### Art. 20.16. Res Judicata

In the determination of any case arising under this Chapter the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

#### Art. 20.17. Tax Suit Comity

The courts of this State shall recognize and enforce liabilities for sales and use taxes lawfully imposed by any other state, provided that such other state extends a like comity to this State.

[Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1; Acts 1963, 58th Leg., p. 371, ch. 138, § 1, eff. July 1, 1963.]

### CHAPTER 21. ADMISSIONS TAX

#### Article

- 21.01. Reports Required.
- 21.02. Tax Imposed.
- 21.03. Records Required.
- 21.04. Penalties.

#### Art. 21.01. Reports Required

Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera halls, and including horse racing, dog racing, motorcycle racing, automobile racing, and like contests and exhibitions, and including dance halls, night clubs, skating rinks, and any and all other places of amusements not prohibited by law, shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on any admission collected for dances, moving pictures, operas, plays and musical entertainments, all the proceeds of which inure exclusively to the benefit of State, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock; and provided further, that entertainments such as motion pictures, operas, plays and like amusements held at a fixed and regular established motion picture theater where the admission charge is less than One Dollar and One Cent (\$1.01) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 21.02. Tax Imposed

(1) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or fractional part thereof paid as admission to entertainments such as motion pictures, operas, plays and like amusements held at places other than at a fixed and regularly established motion picture theater, where the admission charged is in excess of fifty-one cents (51¢) per person.

(2) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays and like amusements held at a fixed or regularly established motion picture theater, where the

admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

(3) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, and like mechanical or animal contests and exhibitions, except automobile racing.

(4) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or a fractional part thereof paid as admission to dance halls, night clubs, skating rinks, and any and all other like places of amusements, contests, and exhibitions where the admission charged is in excess of fifty-one cents (51¢).

(5) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place of amusement, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place of amusement would be subject to taxation under the foregoing provisions.

(6) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 8, § 1, eff. Oct. 1, 1969.]

#### Art. 21.03. Records Required

Every person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall make and keep records in Texas at Headquarters Office, or if an itinerant producer the place where records are to be kept shall be at the address shown on remittance report if outside the boundaries of Texas, or at a place to be named on said remittance report if to be kept in Texas, for a period of two (2) years. Said records shall correctly reflect

(1) the date of event for which a ticket of admission was required,

(2) the value of each ticket of admission,

(3) number of patrons admitted by each ticket of admission, and

(4) if admitted gratuitously, the number of patrons so admitted.

Said records shall be open to the inspection of the Comptroller and the Attorney General, or their duly authorized agents. If any person, firm, association of persons, or corporation shall fail to keep such records or shall refuse to allow the inspection of such records as above provided for, such person, firm, association of persons, or corporation shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25) nor more than One Thousand Dollars (\$1,000) for each violation, and each violation

shall constitute a separate offense. The venue for the collection of such penalties by suit shall be in Travis County, Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 21.04. Penalties

(1) In the event any person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall fail or refuse to pay said tax to the Treasurer of this State on or before the date provided in this Chapter, he shall forfeit to the State of Texas not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each violation, and each day's delinquency shall constitute a separate offense. Provided that in addition to the penalties shown, if any person, firm, association of persons, or corporation shall fail to pay said tax or file such report as required by this Chapter when the same shall be due, he shall forfeit five per cent (5%) of the amount of the tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of such penalties by suit shall be in Travis County, Texas.

(2) The State of Texas shall have a prior lien for all delinquent taxes and penalties provided for in this Chapter on all property, real and personal, belonging to the operator of any place of amusement as designated in this Chapter, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in any court of competent jurisdiction in Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such taxes and penalties are paid.

(3) Any person managing or controlling any place of amusement required to file a report or keep records as provided in this Chapter, who shall fail or refuse to file such report on the date provided in this Chapter, or make and keep such records, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-Five Dollars (\$25) nor more than One Hundred Dollars (\$100) and such punishment shall be in addition to the civil penalties herein provided for. The venue for such prosecutions is hereby conferred upon the Courts of Travis County, Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 15, eff. Sept. 1, 1961; Acts 1971, 62nd Leg., p. 2808, ch. 910, § 1, eff. June 15, 1971.]

## CHAPTER 22. SEVERANCE BENEFICIARY TAX

#### Article

22.01. Levy of Tax; Rate and Calculation; Payment.

22.02. Definitions.

## Article

- 22.03. Erroneous Payment; Failure to Pay Tax.  
 22.04. Reports and Investigations; Rules and Regulations; Administration of Chapter.  
 22.05. Suits Against Delinquents for Injunction.  
 22.06. Penalties; Lien of State.  
 22.07. Evidence in Suit by State; Reports; Transfer of Lease.  
 22.08. Nonliability of Producer.  
 22.09. Nonseverability Clause.

### Art. 22.01. Levy of Tax; Rate and Calculation; Payment

(1) In addition to the occupation tax on producers of natural gas levied by Chapter 3 of this Act, there is hereby levied an occupation tax on the occupation or privilege of obtaining the production of Dedicated Gas within this State, and on the business or occupation of producing such gas, to be known as the "Severance Beneficiary Tax," and to be computed as follows:

The rate of said tax shall be one and one half per cent (1½%) of the market value of gas as and when produced.

In calculating the tax herein levied there shall be excluded:

- (1) gas injected into the earth in this State unless sold for such purpose;
- (2) gas produced from oil wells with oil and lawfully vented or flared;
- (3) gas used for lifting oil unless sold for such purposes;
- (4) gas used in connection with the irrigation of lands in Texas.

(2) The market value of gas subject to the tax hereby levied shall be the value thereof at the mouth of the well except in cases where liquid hydrocarbons are extracted or recovered therefrom in this State, in which event the market value shall be the value of the residue gas remaining after such extraction or removal, and no additional tax on liquid hydrocarbons extracted or recovered from gas is levied by this Chapter.

(3) The tax hereby levied is an occupation tax on the occupation or privilege of obtaining the production of "Dedicated Gas" and on the business or occupation of producing such gas as a "Severance Beneficiary," as these terms are defined herein.

(4) The tax hereby levied shall be a liability of the producer of gas, but if produced for or sold to a severance beneficiary other than the producer, the tax shall be the liability of and paid by the severance beneficiary. It is the intention of this Article that the producer shall be required to pay the tax hereby levied only if the gas is produced for his own use or independent sale and not under any prior contract to produce for sale to another. The provisions in this paragraph shall not be severable and producers shall not be liable for any tax under the provisions of this Article unless severance beneficiaries other than producers are also liable as provided under the terms hereof. If the tax hereby levied is held invalid as to any class of severance beneficiaries, other than gov-

ernmental entities or organizations held to be exempt from taxation, then it shall not be valid as to other severance beneficiaries or producers, and the non-severability provisions of this Article shall prevail over the general severability clause in Section 5 of this Act. It shall be the duty of each producer to keep accurate records in Texas of all gas produced and to make monthly reports under oath as hereinafter provided.

(5) The first purchaser of gas shall pay the tax on gas purchased, and if he is not the severance beneficiary, shall collect the tax so paid from the severance beneficiary, making such payments so collected to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Such moneys so collected for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by such said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Chapter; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased or obtained as hereinafter provided and to make and deliver to the Comptroller verified monthly reports thereof. If there is no first purchaser or severance beneficiary other than the producer, then the producer shall pay to the Comptroller the tax levied by this Chapter.

(6) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each producer and severance beneficiary and first purchaser shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas produced and purchased, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, and the correct name and address of the severance beneficiary, and first purchaser and such other information as the Comptroller may desire, such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

(7) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid. [Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

### Art. 22.02. Definitions

(1) For the purpose of this Chapter, "Producer" shall mean any person (other than a non-operating royalty owner) owning, controlling, managing, or

leasing any gas well or land producing gas, and any person who produces in any manner any gas by taking it from the earth or waters in this State.

(2) "First Purchaser" shall mean any person purchasing gas from the producer.

(3) "Dedicated Gas" shall include all gas withdrawn from the lands or waters of this State for the use and benefit of a severance beneficiary.

(4) "Severance Beneficiary" shall mean any person for whose use and benefit gas is withdrawn from the land or waters of this State. Where a contract in writing confers upon one person the prior right to take title to gas produced from particular lands, leases or reservoirs in this State and other persons are obligated to maintain and operate wells, gathering or dehydration facilities or to process or treat such gas so as to make delivery thereof as required by such contract, it shall be conclusively presumed

(i) that by such contract gas in place under lands or leases or within such reservoirs has been pledged, dedicated and set apart to satisfy such contract and

(ii) that any gas which is delivered and accepted under such contract has been withdrawn from the lands and waters of this State for the use and benefit of the person taking title to such gas by virtue of such contract.

If there be more than one such contract covering the same gas, the tax hereby levied shall be the liability of the person who ultimately takes title to the gas in this State by virtue of such contracts. In all other instances, it shall be conclusively presumed that gas when withdrawn from the lands and waters of this State is withdrawn for the use and benefit of the person taking it from the land or waters in this State and having the original possessory right there-to as and when the same is produced.

(5) "Gas" shall mean natural and casinghead gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate, and/or condensate, or other products.

(6) The term "Casinghead Gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(7) "Report" shall mean any report required to be furnished in this Chapter or that may be required by the Comptroller in the administration of its provisions.

(8) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(9) "Production" or "Total Gas Produced" shall mean the total gross amount of gas produced. The tax imposed by this Chapter shall be measured or determined by meter readings showing one hundred per cent (100%) of the full volume expressed in cubic feet.

(10) For the purposes of this Chapter, the term "Cubic Foot of Gas" or "Standard Cubic Foot of Gas" means the volume of gas (including natural and casinghead) contained in one (1) cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be sixty (60) degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(11) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.03. Erroneous Payment; Failure to Pay Tax

(1) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any tax-paying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(2) The failure of a first purchaser or a severance beneficiary to pay the tax levied by this Chapter shall not relieve any subsequent purchaser from the payment of same, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the person primarily liable therefor.  
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.04. Reports and Investigations; Rules and Regulations; Administration of Chapter

The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers, purchasers, and severance beneficiaries to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Chapter, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books or records of any persons, subject to a tax under this Chapter, and to secure any other information directly or indirectly concerned in the enforcement of this Chapter, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Chapter, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Chapter is made, one half (½) of one per cent (1%) of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Chapter; and so much of the said proceeds of

one half (½) of one per cent (1%) of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby allocated for such purpose, subject however to appropriation by the Legislature.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.05. Suits Against Delinquents for Injunction

In the event any severance beneficiary or first purchaser of gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such persons from producing, purchasing, delivering or taking delivery of gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.06. Penalties; Lien of State

Severance beneficiaries, first purchasers and producers shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for failure or omission to keep the records required herein or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interest on all property and equipment used by a severance beneficiary or first purchaser of gas in his business of producing gas or purchasing gas, and if any severance beneficiary or first purchaser of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the severance beneficiary and first purchaser of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby allocated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.07. Evidence in Suit by State; Reports; Transfer of Lease

(1) If any severance beneficiary or first purchaser of gas fails or refuses to pay any tax, penalty, or

interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such severance beneficiary or first purchaser or representative of said severance beneficiary or purchaser, or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said severance beneficiary or purchaser when filed and sworn to by such representative as being made from the records of said severance beneficiary or first purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said severance beneficiary or first purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid, and that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Chapter are hereby made applicable to suits to collect taxes hereunder.

(3) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any gas from any lease in this State whenever the severance beneficiary, first purchaser or producer has failed to file reports as required under the provisions of this Chapter.

(4) Whenever any lease producing gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the person who will operate said lease and be responsible for the filing of reports provided for in this Chapter. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the person formerly owning and/or operating said lease.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.08. Nonliability of Producer

The tax hereinabove imposed shall never be the liability or the obligation of the producer, except in

those cases where the producer is the severance beneficiary as herein defined.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 22.09. Nonseverability Clause

The provisions of this Chapter are hereby declared to be nonseverable; and if this Chapter is declared invalid by a final judgment of a court of competent jurisdiction as to any severance beneficiary, it shall be invalid from the beginning as to the producer and all other severance beneficiaries. The provisions of this Article shall prevail over the provisions of the general severability clause in Section 5 of this Act as to this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

### CHAPTER 23. HOTEL OCCUPANCY TAX

#### Article

- 23.01. Definitions.
- 23.02. Levy of Tax; Rate; Exceptions.
- 23.03. Collection.
- 23.04. Reports.
- 23.05. Rules and Regulations.
- 23.06. Violations.
- 23.07. Penalties.

#### Art. 23.01. Definitions

The following words, terms and phrases are, for the purposes of this Chapter, except where the context clearly indicates a different meaning, defined as follows:

(a) "Hotel" shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, sanitariums, or nursing homes.

(b) "Consideration" shall mean the cost of the room in such hotel and shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

(c) "Occupancy" shall mean the use or possession, or the right to the use or possession of any room or rooms in a hotel for any purpose.

(d) "Occupant" shall mean anyone, who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms in a hotel under any lease, concessions, permit, right of access, license, contract or agreement.

(e) "Person" shall mean any individual, company, corporation, or association owning, operating, managing or controlling any hotel.

(f) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(g) "Quarterly Period" shall mean the regular calendar quarters of the year, the first quarter

being composed of the months of January, February and March, the second quarter being the months of April, May and June, the third quarter being the months of July, August and September, and the fourth quarter being the months of October, November and December.

(h) "Permanent Resident" shall mean any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 23.02. Levy of Tax; Rate; Exceptions

(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of Two Dollars (\$2) or more per day, such tax to be equal to three per cent (3%) of the consideration paid by the occupant of such room to such hotel.

(b) No tax shall be imposed hereunder upon a permanent resident.

(c) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 23.03. Collection

Every person owning, operating, managing or controlling any hotel, shall collect the tax imposed in Article 23.02 hereof for the State of Texas.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 23.04. Reports

On the last day of the month following each quarterly period, every person required in Article 23.03 hereof to collect the tax imposed herein shall file a report with the Comptroller showing the consideration paid for all room occupancies in the preceding quarter, the amount of tax collected on such occupancies, and any other information as the Comptroller may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

#### Art. 23.05. Rules and Regulations

The Comptroller shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall upon reasonable notice have access to books and records necessary to enable him to determine the correctness of any report filed as required by this Chapter and the amount of taxes due under the provisions of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 23.06. Violations**

If any person required by the provisions of this Chapter to collect the tax imposed herein, make reports as required herein, and pay to the Comptroller the tax imposed herein, shall fail to collect such tax, file such report, or pay such tax, or if such person shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

**Art. 23.07. Penalties**

If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall

never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1; Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. VII, § 2, eff. Sept. 1, 1961.]

**CHAPTER 24. ALLOCATION OF TAX REVENUES**

Article

24.01. Enforcement and Administration of Funds; Allocation.

**Art. 24.01. Enforcement and Administration of Funds; Allocation**

All revenues collected from the taxes imposed by the Chapters of Title 122a, after deduction of the portion allocated for collection, enforcement, and administration purposes by various Chapters of such Title, shall be allocated as follows:

CHAPTER OR ARTICLE OF THIS TITLE LEVYING THE TAX	PORTION ALLOCATED TO THE AVAILABLE SCHOOL FUND	PORTION ALLOCATED TO THE OMNIBUS TAX CLEARANCE FUND (Established by Acts 1941, 47th Leg., Ch. 184, as amended)	PORTION ALLOCATED TO THE GENERAL REVENUE FUND
Chapter 2 (Poll Tax)	2%		2%
Chapter 3 (Natural Gas Tax)	1/4	3/4	
Chapter 4 (Oil Production Tax)	1/4	3/4	
Chapter 5 (Sulphur Tax)	1/4	3/4	
Chapter 6 (Motor Vehicle Sales and Use Tax)	1/4	3/4	
Chapter 7 (Cigarette Tax Article 7.02)	18.75%		81.25%
(Cigarette Tax Article 7.06)			All
Chapter 8 (Tobacco Products Tax)			All
Chapter 9 Motor Fuel (Gasoline)		Allocated as provided in Article 9.25, Chapter 9, of this Act.	
Chapter 10 (Special Fuels Tax)		Allocated as provided in Article 10.22, Chapter 10, of this Act.	
Chapter 11 (Miscellaneous Gross Receipts Taxes)	1/4	3/4	
Chapter 12 (Franchise Tax)			All
Chapter 13 (Coin-Operated Machines Tax)	1/4	3/4	

CHAPTER OR ARTICLE OF THIS TITLE LEVYING THE TAX	PORTION ALLOCATED TO THE AVAILABLE SCHOOL FUND	PORTION ALLOCATED TO THE OMNIBUS TAX CLEARANCE FUND (Established by Acts 1941, 47th Leg., Ch. 184, as amended)	PORTION ALLOCATED TO THE GENERAL REVENUE FUND
Chapter 14 (Inheritance Tax)			All
Chapter 15 (Additional Inheritance Tax)			All
Chapter 16 (Stock Transfer Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 17 (Store and Exempt Store Tax)	$\frac{1}{4}$		$\frac{3}{4}$
Chapter 18 (Cement Production Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 19 (Misc. Occupation Taxes Including Oil Well Servicing)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 20 (Misc. Excise Taxes)			All
Chapter 21 (Admissions Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 22 (Severance Beneficiary Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 23 (Hotel Occupancy Tax)			All

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.]

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1 §§ 1 to 9, provided:

Sec. 1. That the following Chapters and Articles are adopted and shall constitute a new Title of the Revised Civil Statutes of Texas to be known as "Title 122A, Taxation—General".

[Text of Title 122A, see Article 1.01 et seq., ante]

Sec. 2. [Amended Article 666–21, Penal Auxiliary Laws.]

Sec. 3. **Construction of this Act.** With respect to the provisions of this Act which tax transactions subject to taxation by the State prior to the effective date of this Act, this Act shall be considered to be the equivalent of a revision by amendment even though it is in the form of an enactment of new law and repeal of the old law. This Act shall be construed to make a substantive change in the prior law only where the language of this Act manifests a clear intent to make such a change.

Sec. 4. **Savings Clause.** The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. Taxes incurred under any law repealed by this Act are an obligation within the meaning of this Section. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

Sec. 5. **Severability.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Sec. 6. **Appropriation.** Whenever any allocation is made by this Act for administration to the collection agency of the State collecting such tax such allocation shall be subject to appropriation by the Legislature; and appropriation by the Legislature of such funds or any part thereof shall be in lieu of the percentages allocated by this Act.

Sec. 7. **Repealer.** (a) Wherever used in this Section, Article numbers are references to Vernon's Annotated Civil Statutes of Texas except where such Article numbers are designated as Articles of the Revised Civil Statutes of Texas, 1925, or Vernon's Annotated Penal Code of Texas.

(b) The following statutes and acts, together with all laws or parts of laws in conflict herewith, are hereby repealed:

Revised Civil Statutes of Texas, 1925, Article 7046 (Poll Tax) as amended; Article 7071; Article 7066 (Sulphur Tax) as amended; Article 7065 and Acts 1941, Forty-seventh Legislature, Regular Session, Chapter 184, Article XVII as amended, compiled as Article 7065b (Motor Fuel Tax); Article 7058 (Express Companies) as amended; Article 7059 (Telegraph Companies) as amended; Article 7060 (Gas, Electric Light, Electric Power and Water Works) as amended; Article 7061 (Collecting Agencies) as amended; Article 7062 (Car Companies) as amended; Article 7063 (Sleeping, Palace or Dining Car Companies) as amended; Article 7068 (Dealers in Pistols) as amended; Article 7069 (Textbook Publishers) as amended; Article 7070 (Telephone Companies) as amended; Articles 7084 through 7097 (Franchise Tax) as amended; Articles 7117 through 7144 (Inheritance Tax) as amended; Article 7057, as amended; Article 7076, as amended; Article 7078, as amended.

Acts 1933, Forty-third Legislature, Regular Session, Chapter 162, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 9a and 9b as amended and Chapters 6 and 7 of Acts 1939, Forty-sixth Legislature, Regular Session referred to therein as Sections 7a, 8a and 8b of Article 7057a of the Revised Civil Statutes of Texas, 1925, all of which is compiled as Article 7057a of Vernon's Annotated Civil Statutes of Texas and Article 1111a of Vernon's Annotated Penal Code of Texas (Oil Production Tax).

Acts 1931, Forty-second Legislature, Regular Session, Chapter 267, compiled as Article 7047d (Tax on Dealers in Pistols), as amended.

Acts 1933, Forty-third Legislature, Chapter 192, Section 2b, as amended, compiled as Article 7144a, as amended (Additional Inheritance Tax); Acts 1937, Forty-fifth Legislature, Chapter 310, as amended, compiled as Article 7047j; Acts 1950, Fifty-first Legislature, First Called Session, Chapter 2, Article XX, compiled as Article 7057e.

Revised Civil Statutes of Texas, 1925, Article 7047, Section 1 (Itinerant Merchants); Section 2 (Traveling Vendors of Patent Medicines); Section 3 (Itinerant Physicians); Section 5 (Clock Peddlers); Section 6 (Auctioneers); Section 7 (Brokers and Factors); Section 9 (Ship Brokers); Section 10 (Insurance Adjusters); Section 13 (Pawnbrokers); Section 14 (Loan Brokers); Section 15 (Money Lenders); Section 16 (Credit Reporting); Section 21 (Street Car Companies) and Section 23 (Coin-Operated Machines); Section 24 (Circus and Shows); Section 25 (Menageries, Museums, Carnivals); Section 26 (Waxworks); Section 27 (Wrestling Matches and Acrobatic Performances); Section 28 (Sleight-of-Hand Performances); Section 29 (Medicine Shows); Section 30 (Concerts); Section 31 (Rodeos); Section 32 (Baseball Parks); Section 33 (Race Tracks); Section

34 (Skating Rinks); Section 35 (Shooting Galleries); Section 36 (Nine and Ten Pin Alleys); Section 37 (Hobby Horses); Section 38 (Dealers in Cannon Crackers); Section 41 (Cement Distributors) as added by Acts 1931, Forty-second Legislature, Chapter 212, Section 1 and as amended by Article XII, Chapter 184, Forty-seventh Legislature, Regular Session, 1941 and by Section XII, Chapter 402, Fifty-second Legislature, Regular Session, 1951, compiled as Subdivision 41a of Article 7047 (Cement Distributors); and Sections 42, 43 and 44 (Administrative Procedures) as all such Sections have been amended.

Acts 1930, Forty-first Legislature, Fifth Called Session, Chapter 35, compiled as Subdivision 22a of Article 7047 (Theaters).

Acts 1941, Forty-seventh Legislature, Regular Session, Chapter 184, Article III as amended by Acts 1951, Fifty-second Legislature, Regular Session, Chapter 402, Section II, compiled as Subdivision 40b of Article 7047 (Sulphur Producers).

Acts 1930, Forty-first Legislature, Fifth Called Session, Chapter 37, compiled as Subdivision 41 of Article 7047 (Textbook Publishers).

Acts 1936, Forty-fourth Legislature, Third Called Session, Chapter 495, Article III, Section 6; as amended, compiled as Article 7047a-19 (Admissions Tax).

Acts 1936, Forty-fourth Legislature, Third Called Session, Chapter 495, Article IV, Sections 10 and 12 and Article V, Section 1, as amended, compiled as Articles 7047f, 7047h and 7047i (Prizes and Awards Tax).

Acts 1941, Forty-seventh Legislature, Chapter 184, Article X, compiled as Article 7047l (Luxury Excise Tax on Cosmetics and Playing Cards) as amended.

Acts 1955, Fifty-fourth Legislature, Regular Session, Chapter 522, as amended, compiled as Article 7047l-1 (Excise Tax on Radios and Television Sets).

Acts 1931, Forty-second Legislature, Regular Session, Chapter 73, compiled as Article 7047b (Natural Gas Production Tax) as amended.

Acts 1941, Forty-seventh Legislature, Chapter 184, Article VI (Motor Vehicle Retail Sales Tax) as amended, compiled as Article 7047k.

Acts 1935, Forty-fourth Legislature, Regular Session, Chapter 241, as amended, compiled as Article 7047c-1 (Cigarette Tax).

Acts 1935, Forty-fourth Legislature, First Called Session, Chapter 400, as amended, compiled as Vernon's Annotated Texas Penal Code, Article 1111d (Store and Exempt Store Tax).

Acts 1941, Forty-seventh Legislature, Chapter 184, Article XV, as amended, compiled as Article 7047m (Stock Transfer and Sales Tax).

Acts 1936, Forty-fourth Legislature, Third Called Session, Chapter 495, Article III, Section 4, as amended by Acts 1951, Fifty-second Legislature, Chapter 379, Section 1, as amended by Added Acts 1951, Fifty-second Legislature, Chapter 380, Section 1, compiled as Articles 7047a-2 through 7047a-18 (Coin-Operated Machines Tax).

Acts 1941, Forty-seventh Legislature, Chapter 184, Article XVI, compiled as Article 7060a (Oilwell Servicing Tax) as amended by Acts 1951, Fifty-second Legislature, Chapter 402, Section XIV; and Acts 1954, Fifty-third Legislature, First Called Session, Chapter 2, Article V, Section 1.

Acts 1941, Forty-seventh Legislature, Chapter 184, Article XIV, Section 1, compiled as Article 7066b (Motor Carriers, etc.) as amended; also Acts 1941, Forty-seventh Legislature, Chapter 389, Section 2, compiled as Article 7066b-1.

**Sec. 8. Effective Date.** This Act shall be effective September 1, 1959.

**Sec. 9. Emergency.** The necessity for revising and rearranging the taxes referred to in this Act and the pressing necessity to realize additional revenue for the State creates as emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after September 1, 1959, and it is so enacted.

## DISPOSITION TABLE

Showing where former Articles of the Texas Civil Statutes relating to  
Taxation will be found in Title 122A, Taxation-General.

Civ.St. Articles	Taxation General Articles	Civ.St. Articles	Taxation General Articles
7046	2.01	7047b § 5	3.08
7047	19.01	7047b § 6	3.09
7047 subd. 6	19.01(1)	7047b § 6	3.10
7047 subd. 7	19.01(2)	7047c-1 § 1	7.01
7047 subd. 9	19.01(9)	7047c-1 § 2	7.02
7047 subd. 10	19.01(3)	7047c-1 § 2	7.03
7047 subd. 13	19.01(4)	7047c-1 § 2 par. c	7.04
7047 subd. 14	19.01(5)	7047c-1 § 2 par. d	7.05
7047 subd. 15	19.01(6)	7047c-1 § 2½	7.06
7047 subd. 36	19.01(8)	7047c-1 § 2a	7.07
7047 subd. 40b	5.01	7047c-1 § 3	7.08
7047 subd. 40b § 1 par. 2	5.02	7047c-1 § 4	7.09
7047 subd. 41a(a)	18.01	7047c-1 § 5	7.10
7047 subd. 41a(b) (c) (d)	18.02	7047c-1 § 6	7.11
7047 subd. 41a(e)	18.03	7047c-1 § 6	7.12
7047 subd. 41a(f)	18.04	7047c-1 § 7	7.13
7047 subd. 43	19.03	7047c-1 § 7	7.14
7047a-2	13.01	7047c-1 § 8	7.15
7047a-3	13.02	7047c-1 § 8a	7.16
7047a-4	13.03	7047c-1 § 9	7.17
7047a-5	13.04	7047c-1 § 10	7.19
7047a-6	13.05	7047c-1 § 11	7.20
7047a-7	13.06	7047c-1 § 13	7.21
7047a-8	13.07	7047c-1 § 14	7.22
7047a-9	13.08	7047c-1 § 15	7.23
7047a-10	13.09	7047c-1 § 16	7.24
7047a-11	13.10	7047c-1 § 16 par. (a)	7.25
7047a-12	13.11	7047c-1 § 16 par. (a)	7.26
7047a-13	13.12	7047c-1 § 17	7.27
7047a-14	13.13	7047c-1 § 18	7.28
7047a-15	13.14	7047c-1 § 19	7.29
7047a-15a	13.15	7047c-1 § 20	7.30
7047a-16	13.16	7047c-1 § 20	7.31
7047a-19	21.01	7047c-1 § 21	7.32
7047a-19 subsecs. 3-7	21.02	7047c-1 § 22	7.33
7047a-19 subsec. 9	21.03	7047c-1 § 23	7.34
7047a-19 subsec. 10	21.04	7047c-1 § 24	7.35
7047a-20 § 4	1.08	7047c-1 § 26	7.36
7047b	3.01	7047c-1 § 26	7.37
7047b § 1(2)	3.02	7047c-1 § 28	7.38
7047b § 1(4)	3.03	7047c-1 § 30	7.40
7047b § 2	3.04	7047c-1 § 30a	7.39
7047b § 2a	3.05	7047c-1 note	7.41
7047b § 3	3.06	7047c-2 § 9	7.18
7047b § 4	3.07	7047d	19.01(7)

## DISPOSITION TABLE

Civ.St. Articles	Taxation General Articles	Civ.St. Articles	Taxation General Articles
7047j	1.06	7060	11.03
7047k § 1	6.01	7060a § 1	19.02
7047k § 2(a)	6.03	7062	11.04
7047k § 2(b)	6.04	7063	11.05
7047k § 3	6.05	7065b-1	9.01
7047k § 4	6.06	7065b-1	10.02
7047k § 5	6.07	7065b-2	9.02
7047k § 5(a)	6.08	7065b-3	9.03
7047k § 5a(b)	6.09	7065b-4	9.04
7047k § 6	6.10	7065b-4	10.23
7047k § 7	6.11	7065b-5	9.05
7047l	20.01	7065b-6	9.06
7047l	20.02	7065b-7	9.07
7047l	20.05	7065b-8	9.08
7047l	20.06	7065b-9	9.09
7047l-1 § 1	20.01	7065b-10	9.10
7047l-1 § 2	20.02	7065b-11	9.11
7047l-1 § 3	20.09	7065b-12	9.12
7047l-1 § 4	20.10	7065b-13	9.13
7047l-1 § 5	20.11	7065b-13	10.14
7047l-1 § 6	20.12	7065b-13	10.15
7047l-1 § 7	20.13	7065b-14	10.03
7047l-1 § 8	20.14	7065b-14	10.08
7047l-1 § 9	20.15	7065b-14	10.09
7047l-1 § 10	20.16	7065b-14(a)	9.14
7047l-1 § 11	20.17	7065b-14(c)	10.10
7047l-1 § 12	20.18	7065b-14(d)	10.11
7047l-1 § 13	20.19	7065b-14(e)	10.12
7047l-1 § 14	20.20	7065b-14(e)	10.16
7047l-1 § 15	20.20	7065b-14(f)	10.13
7047m § 1	16.01	7065b-14(f)	10.16
7047m § 2	16.02	7065b-14(g)	10.17
7047m § 3	16.03	7065b-15	9.15
7047m § 4	16.04	7065b-16	9.16
7047m § 6	16.05	7065b-17	9.17
7047m § 7	16.06	7065b-18	9.18
7047m § 8	16.07	7065b-18	10.18
7047m § 9	16.08	7065b-19	9.19
7047m § 10	16.09	7065b-20	9.20
7057	1.03	7065b-20	10.19
7057a § 1	4.01	7065b-21	9.21
	4.03	7065b-22	9.22
7057a § 2	4.02	7065b-23	9.23
	4.03	7065b-24	9.24
7057a § 3	4.04	7065b-24	10.20
7057a § 4	4.05	7065b-25	9.25
7057a § 5	4.06	7065b-25	10.22
7057a § 6	4.07	7065b-26	9.26
7057a § 7	4.08	7065b-26	10.25
7057a § 8a	4.09	7065b-27	9.27
7057a § 8b	4.10	7065b-27	10.24
7057a § 9	4.11	7070	11.06
7057e	1.07, 1.10	7076	1.04
7058	11.01	7078	1.09
7059	11.02	7084	12.01
		7084	12.02

Clv.St. Articles	Taxation General Articles
7085	12.05
7086	12.06
7086	12.09
7087	12.07
7089	12.08
7089	12.10
7089	12.11
7089	12.12
7090	12.13
7091	12.14
7092	12.15
7093	12.04
7094	12.03
7095	12.16
7096	12.17
7097	12.18
7117	14.01
7118	14.02
7119	14.03
7120	14.04
7121	14.05
7122	14.06
7122a	14.07
7123	14.08
7124	14.09
7125	14.10
7126	14.11
7127	14.12
7128	14.13
7129	14.14
7130	14.15
7131 par. (a)	14.16
7131 par. b	14.17
7132	14.18
7133	14.19
7134	14.20
7135	14.21

Clv.St. Articles	Taxation General Articles
7136	14.22
7137	14.23
7138	14.24
7139	14.25
7141	14.26
7144	14.27
7144a § 1	15.01
7144a § 2	15.02
7144a § 3	15.03
7144a § 4	15.04
7144a § 5	15.05
7144a § 6	15.06
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 Second or subsequent offense, refund motor fuel, Tax-Gen 9.13.  
 Sheriff, authority to examine motor vehicle transporting fuel, Tax-Gen 9.20.  
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 Special fuels tax,  
     Allocation of revenues,  
         Diesel fuel tax, Tax-Gen 10.22.  
         Liquefied gas tax, Tax-Gen 10.72.

**MOTOR FUEL TAX—Cont'd**

Special fuels tax—Cont'd  
 Allowances for evaporation and handling, etc.,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Appeal, permit cancellation,  
     Diesel fuel tax, Tax-Gen 10.11.  
     Liquefied gas tax, Tax-Gen 10.61.  
 Audit,  
     Records of import user,  
         Diesel fuel tax, Tax-Gen 10.13.  
         Liquefied gas tax, Tax-Gen 10.63.  
     Refusal, felony penalty,  
         Diesel fuel tax, Tax-Gen 10.24.  
         Liquefied gas tax, Tax-Gen 10.74.  
 Available free school fund, allocation of funds,  
     Diesel fuel tax, Tax-Gen 10.22.  
     Liquefied gas tax, Tax-Gen 10.72.  
 Bonds,  
     Applicant for permit,  
         Diesel fuel tax, Tax-Gen 10.10.  
         Liquefied gas tax, Tax-Gen 10.60.  
 Bulk sale,  
     Invoice,  
         Diesel fuel tax, Tax-Gen 10.12.  
         Liquefied gas tax, Tax-Gen 10.62.  
     Unlawful sales,  
         Diesel fuel, Tax-Gen 10.06.  
         Liquefied gas, Tax-Gen 10.56.  
 Cancellation of permits,  
     Diesel fuel tax, Tax-Gen 10.11.  
     Effect on bonds,  
         Diesel fuel tax, Tax-Gen 10.10.  
         Liquefied gas tax, Tax-Gen 10.60.  
     Liquefied gas tax, Tax-Gen 10.61.  
 Cargo tank, transporting on public highways, unlawful operation,  
     Diesel fuel tax, Tax-Gen 10.05.  
     Liquefied gas tax, Tax-Gen 10.55.  
 Cash deposit in lieu of bond,  
     Diesel fuel tax, Tax-Gen 10.10.  
     Liquefied gas tax, Tax-Gen 10.60.  
 Certificate,  
     Comptroller, evidence,  
         Diesel fuel tax, Tax-Gen 10.16.  
         Liquefied gas tax, Tax-Gen 10.66.  
 Cities and towns, levy or collection,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Claim for refund,  
     Diesel fuel tax, Tax-Gen 10.14.  
     Liquefied gas tax, Tax-Gen 10.64.  
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     Diesel fuel, Tax-Gen 10.03.  
     Expenses, deductions or allowances for,  
         Diesel fuel, Tax-Gen 10.03.  
         Liquefied gas, Tax-Gen 10.53.  
     Liquefied gas, Tax-Gen 10.53.  
 Combines, delivery of fuel into fuel supply tanks,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Contempt of court, disobedience of summons to appear before comptroller,  
     Diesel fuel tax, Tax-Gen 10.20.  
     Liquefied gas tax, Tax-Gen 10.70.  
 Conversion of tax to own use,  
     Diesel fuel tax, Tax-Gen 10.23.  
     Liquefied gas tax, Tax-Gen 10.73.  
 Counties, levy or collection of excise tax,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.

**MOTOR FUEL TAX—Cont'd**

Special fuels tax—Cont'd  
 Credit, erroneous report in payment of taxes,  
     Diesel fuel tax, Tax-Gen 10.13.  
     Liquefied gas tax, Tax-Gen 10.63.  
 Crimes and offenses,  
     Felony penalties,  
         Diesel fuel tax, Tax-Gen 10.24.  
         Liquefied gas tax, Tax-Gen 10.74.  
 Dealers,  
     Application for permit,  
         Diesel fuel tax, Tax-Gen 10.09.  
         Liquefied gas tax, Tax-Gen 10.59.  
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     Diesel fuel tax, Tax-Gen 10.11.  
     Liquefied gas tax, Tax-Gen 10.61.  
 Report, accounting for fuels handled,  
     Diesel fuel tax, Tax-Gen 10.13.  
     Liquefied gas tax, Tax-Gen 10.63.  
 Deductions for evaporation and handling losses,  
     Diesel fuels, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Definitions,  
     Diesel fuel tax, Tax-Gen 10.02.  
     Liquefied gas tax, Tax-Gen 10.52.  
 Deposit of cash or securities in lieu of bond,  
     Diesel fuel tax, Tax-Gen 10.10.  
     Liquefied gas tax, Tax-Gen 10.60.  
 Depositions, authority of comptroller,  
     Diesel fuel tax, Tax-Gen 10.20.  
     Liquefied gas tax, Tax-Gen 10.70.  
 Enforcement fund, allocation,  
     Diesel fuel tax, Tax-Gen 10.22.  
     Liquefied gas tax, Tax-Gen 10.72.  
 Erroneous reports on payment of taxes, credit,  
     Diesel fuel tax, Tax-Gen 10.13.  
     Liquefied gas tax, Tax-Gen 10.63.  
 Evaporation, deductions or allowances for,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Evidence, claims or audits,  
     Diesel fuel tax, Tax-Gen 10.16.  
     Liquefied gas tax, Tax-Gen 10.66.  
 Exceptions to tax refunds,  
     Diesel fuel tax, Tax-Gen 10.15.  
     Liquefied gas tax, Tax-Gen 10.65.  
 Excise tax by city, town, county, etc., prohibited,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 False entry in records, penalty,  
     Diesel fuel tax, Tax-Gen 10.24.  
     Liquefied gas tax, Tax-Gen 10.74.  
 Felonies,  
     Diesel fuel tax, Tax-Gen 10.23.  
     Liquefied gas tax, Tax-Gen 10.73.  
 Fines and penalties,  
     Conversion of tax to own use,  
         Diesel fuel tax, Tax-Gen 10.23.  
         Liquefied gas tax, Tax-Gen 10.73.  
     Diesel fuel tax, Tax-Gen 10.18.  
     Diesel fuel tax, Tax-Gen 10.24.  
     Liquefied gas tax, Tax-Gen 10.74.  
 Lien of state,  
     Diesel fuel tax, Tax-Gen 10.17.  
     Liquefied gas tax, Tax-Gen 10.67.  
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     Diesel fuel tax, Tax-Gen 10.25.  
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References without prefixes are to Title 122, Taxation

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   Diesel fuel tax, Tax-Gen 10.13.  
   Liquefied gas tax, Tax-Gen 10.63.  
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   Diesel fuel tax, Tax-Gen 10.19.  
   Liquefied gas tax, Tax-Gen 10.69.  
 Right to obtain permit, felony conviction,  
   Diesel fuel tax, Tax-Gen 10.24.  
   Liquefied gas tax, Tax-Gen 10.74.  
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   Diesel fuel tax, Tax-Gen 10.23.  
   Liquefied gas tax, Tax-Gen 10.73.  
 Handling losses, deductions or allowances for,  
   Diesel fuel, Tax-Gen 10.03.  
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   Diesel fuel tax, Tax-Gen 10.14.  
   Liquefied gas tax, Tax-Gen 10.64.  
 Imported special fuels,  
   Computation on mileage basis,  
     Diesel fuel, Tax-Gen 10.08.  
     Liquefied gas, Tax-Gen 10.58.  
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   Diesel fuel tax, unauthorized use of fuel, Tax-Gen 10.19.  
   Liquefied gas tax, unauthorized use of fuels, Tax-Gen 10.69.  
 Refusal to surrender, felony penalties,  
   Diesel fuel tax, Tax-Gen 10.24.  
   Liquefied gas tax, Tax-Gen 10.74.  
 Injunction venue,  
   Diesel fuel tax, Tax-Gen 10.18.  
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 Interest,  
   Fines and penalties,  
     Diesel fuel tax, Tax-Gen 10.18.  
     Liquefied gas tax, Tax-Gen 10.68.  
   Lien of state,  
     Diesel fuel tax, Tax-Gen 10.17.  
     Liquefied gas tax, Tax-Gen 10.67.  
     Liquefied gas tax, Tax-Gen 10.63.  
 Invoice,  
   Bulk sale and delivery,  
     Diesel fuel tax, Tax-Gen 10.12.  
     Liquefied gas tax, Tax-Gen 10.62.  
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     Diesel fuel tax, Tax-Gen 10.14.  
     Liquefied gas tax, Tax-Gen 10.64.  
   Failure to issue,  
     Diesel fuel tax, Tax-Gen 10.16.  
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 Leased motor vehicles, liability,  
   Diesel fuel tax, Tax-Gen 10.07.  
   Liquefied gas tax, Tax-Gen 10.57.  
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   Diesel fuel tax, Tax-Gen 10.07.  
   Liquefied gas tax, Tax-Gen 10.57.  
 Levy of tax,  
   Diesel fuel, Tax-Gen 10.03.  
   Liquefied gas, Tax-Gen 10.53.  
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   Diesel fuel tax, Tax-Gen 10.17.  
   Liquefied gas tax, Tax-Gen 10.67.  
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   Determining on,  
     Diesel fuel, Tax-Gen 10.08.  
     Liquefied gas tax, Tax-Gen 10.58.  
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**MOTOR FUEL TAX—Cont'd**

Special fuels tax—Cont'd  
 Mortgage of motor vehicle, lien of state,  
   Diesel fuel tax, Tax-Gen 10.17.  
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 Motor fuel distributor, extension of bond,  
   Diesel fuel tax, Tax-Gen 10.10.  
   Liquefied gas tax, Tax-Gen 10.60.  
 Motor vehicles,  
   Cargo tank, unlawful operation,  
     Diesel fuel tax, Tax-Gen 10.05.  
     Liquefied gas tax, Tax-Gen 10.55.  
   Equipment for multiple fuel use, presumption of use,  
     Diesel fuel, Tax-Gen 10.04.  
     Liquefied gas, Tax-Gen 10.54.  
   Stopping for examination, authority of public officers,  
     Diesel fuel tax, Tax-Gen 10.19.  
     Liquefied gas tax, Tax-Gen 10.69.  
 Non-highway vehicles or machines, delivery into fuel supply tanks,  
   Diesel fuel, Tax-Gen 10.03.  
   Liquefied gas, Tax-Gen 10.53.  
 Notice, cancellation or suspension of permit,  
   Diesel fuel tax, Tax-Gen 10.11.  
   Liquefied gas tax, Tax-Gen 10.61.  
 Oaths and affirmations,  
   Diesel fuel tax, Tax-Gen 10.20.  
   Liquefied gas tax, Tax-Gen 10.70.  
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   Diesel fuel, Tax-Gen 10.08.  
   Liquefied gas, Tax-Gen 10.58.  
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   Diesel fuel tax, Tax-Gen 10.13, 10.23.  
   Liquefied gas tax, Tax-Gen 10.23.  
 Permits,  
   Application,  
     Diesel fuel tax, Tax-Gen 10.09.  
     Liquefied gas tax, Tax-Gen 10.59.  
   Diesel fuel tax, Tax-Gen 10.11.  
   Liquefied gas tax, Tax-Gen 10.61.  
   Posting, permits,  
     Diesel fuel tax, Tax-Gen 10.11.  
     Liquefied gas tax, Tax-Gen 10.61.  
   Presumptions,  
     Failure to keep record, issue invoices or file reports,  
       Diesel fuel tax, Tax-Gen 10.16.  
       Liquefied gas tax, Tax-Gen 10.66.  
     Use,  
       Diesel fuel, Tax-Gen 10.04.  
       Liquefied gas, Tax-Gen 10.54.  
   Production of books and papers,  
     Diesel fuel tax, Tax-Gen 10.20.  
     Liquefied gas tax, Tax-Gen 10.70.  
   Publication, rules and regulations,  
     Diesel fuel tax, Tax-Gen 10.21.  
     Liquefied gas tax, Tax-Gen 10.71.  
 Rate of tax,  
   Diesel fuel, Tax-Gen 10.03.  
   Liquefied gas, Tax-Gen 10.53.  
 Records,  
   Deduction or allowance for expense,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
   Diesel fuel tax, Tax-Gen 10.12.  
   Failure to keep, presumption,  
     Diesel fuel tax, Tax-Gen 10.16.  
     Liquefied gas tax, Tax-Gen 10.66.  
   Liquefied gas tax, Tax-Gen 10.62.  
 Refunds,  
   Diesel fuel tax, Tax-Gen 10.14.

**MOTOR FUEL TAX—Cont'd**

Special fuels tax—Cont'd  
 Refunds—Cont'd  
   Exceptions,  
     Diesel fuel tax, Tax-Gen 10.15.  
     Liquefied gas tax, Tax-Gen 10.65.  
   False statement, felony penalty,  
     Diesel fuel tax, Tax-Gen 10.24.  
     Liquefied gas tax, Tax-Gen 10.74.  
   Liquefied gas tax, Tax-Gen 10.64.  
   Remittance, deductions or allowances for expenses,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Reports,  
   Deductions or allowances for expenses,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
   Diesel fuel tax, Tax-Gen 10.13.  
   Failure to file, presumptions,  
     Diesel fuel tax, Tax-Gen 10.16.  
     Liquefied gas tax, Tax-Gen 10.66.  
   Filing, existing bond becoming insufficient,  
     Diesel fuel tax, Tax-Gen 10.10.  
     Liquefied gas tax, Tax-Gen 10.60.  
   Lessee of motor vehicle,  
     Diesel fuel tax, Tax-Gen 10.07.  
     Liquefied gas tax, Tax-Gen 10.57.  
   Liquefied gas tax, Tax-Gen 10.63.  
   User,  
     Diesel fuel, Tax-Gen 10.03.  
     Liquefied gas, Tax-Gen 10.53.  
 Revocation or suspension of permit,  
   Diesel fuel tax, Tax-Gen 10.10.  
   Liquefied gas tax, Tax-Gen 10.60.  
 Rules and regulations,  
   Diesel fuel tax, Tax-Gen 10.21.  
   Liquefied gas tax, Tax-Gen 10.71.  
 Securities, deposit in lieu of bonds,  
   Diesel fuel tax, Tax-Gen 10.10.  
   Liquefied gas tax, Tax-Gen 10.60.  
 Separate storage facilities, nonhighway use, delivery without paying tax,  
   Diesel fuel, Tax-Gen 10.03.  
   Liquefied gas, Tax-Gen 10.53.  
 State highway fund, allocation of funds,  
   Diesel fuel tax, Tax-Gen 10.22.  
   Liquefied gas tax, Tax-Gen 10.72.  
 Statement, use of fuels purchased,  
   Diesel fuel, Tax-Gen 10.06.  
   Liquefied gas, Tax-Gen 10.56.  
 Subpoenas,  
   Diesel fuel tax, Tax-Gen 10.20.  
   Liquefied gas tax, Tax-Gen 10.70.  
 Summons, appearance before comptroller,  
   Diesel fuel tax, Tax-Gen 10.20.  
   Liquefied gas tax, Tax-Gen 10.70.  
 Supplier,  
   Application for permits,  
     Diesel fuel tax, Tax-Gen 10.09.  
     Liquefied gas tax, Tax-Gen 10.59.  
   Permits,  
     Diesel fuel tax, Tax-Gen 10.11.  
     Liquefied gas tax, Tax-Gen 10.61.  
   Report of fuels handled,  
     Diesel fuel tax, Tax-Gen 10.13.  
     Liquefied gas tax, Tax-Gen 10.63.  
 Suspension of permits,  
   Diesel fuel tax, Tax-Gen 10.11.  
   Liquefied gas tax, Tax-Gen 10.61.  
 Tractors, delivery into fuel supply tanks,  
   Diesel fuel, Tax-Gen 10.03.  
   Liquefied gas, Tax-Gen 10.53.

References without prefixes are to Title 122, Taxation

**MOTOR FUEL TAX—Cont'd**

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 Tractors delivery into fuel supply tanks—Cont'd  
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     Diesel fuel tax, Tax-Gen 10.20.  
     Liquefied gas tax, Tax-Gen 10.70.  
 Trial de novo, appeals, permit cancellations,  
     Diesel fuel tax, Tax-Gen 10.11.  
     Liquefied gas tax, Tax-Gen 10.61.  
 Trip permits,  
     Application,  
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         Liquefied gas tax, Tax-Gen 10.59.  
     Fee,  
         Diesel fuel tax, Tax-Gen 10.09.  
         Liquefied gas tax, Tax-Gen 10.59.  
     Issued in lieu of annual import user's permit,  
         Diesel fuel tax, Tax-Gen 10.09.  
         Liquefied gas tax, Tax-Gen 10.59.  
 Unlawful bulk sales,  
     Diesel fuel, Tax-Gen 10.06.  
     Liquefied gas, Tax-Gen 10.56.  
 Unlawful operations of motor vehicles,  
     Diesel fuel tax, Tax-Gen 10.05.  
     Liquefied gas tax, Tax-Gen 10.55.  
 User,  
     Application for permits,  
         Diesel fuel tax, Tax-Gen 10.09.  
         Liquefied gas tax, Tax-Gen 10.59.  
     Importing fuels in supply tanks of motor vehicles, report,  
         Diesel fuel tax, Tax-Gen 10.13.  
         Liquefied gas tax, Tax-Gen 10.63.  
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         Diesel fuel tax, Tax-Gen 10.11.  
         Liquefied gas tax, Tax-Gen 10.61.  
     Report, accounting for fuels handled,  
         Diesel fuel tax, Tax-Gen 10.13.  
         Liquefied gas tax, Tax-Gen 10.63.  
     Vehicle equipped for multiple fuel use, presumptions,  
         Diesel fuel, Tax-Gen 10.04.  
         Liquefied gas, Tax-Gen 10.54.  
 Venue,  
     Failure to pay or conversion of tax,  
         Diesel fuel tax, Tax-Gen 10.23.  
         Liquefied gas tax, Tax-Gen 10.73.  
     Felony penalties,  
         Diesel fuel tax, Tax-Gen 10.24.  
         Liquefied gas tax, Tax-Gen 10.74.  
     Law or equity proceedings,  
         Diesel fuel tax, Tax-Gen 10.18.  
         Liquefied gas tax, Tax-Gen 10.68.  
     Warrant, refund of tax,  
         Diesel fuel tax, Tax-Gen 10.14.  
         Liquefied gas tax, Tax-Gen 10.64.  
     Witnesses,  
         Compelling attendance,  
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             Liquefied gas tax, Tax-Gen 10.70.  
     State highway fund, allocation of revenue, Tax-Gen 9.25.  
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     Delinquent taxes and penalties, Tax-Gen 1.04.  
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         Defined, Tax-Gen 9.01.  
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END OF VOLUME